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Washington, Wednesday, September 2, 1953

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

NATIONAL LABOR RELATIONS BOARD AND UNITED STATES INFORMATION AGENCY

Effective upon publication in the FEDERAL REGISTER, § 6.342 (b) (6) is revoked, and the positions listed below are expected from the competitive service under Schedule C.

§ 6.333 *National Labor Relations Board*—(a) One Private Secretary to the Chairman of the Board.

§ 6.363 *United States Information Agency*—(a) One Assistant Director for Broadcasting Service.

(b) One Secretary to Assistant Director for Broadcasting Service.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 10440, March 31, 1953, 18 F. R. 1823)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 53-7679; Filed, Sept. 1, 1953; 8:51 a. m.]

TITLE 7—AGRICULTURE

Chapter VIII—Production and Marketing Administration (Sugar Branch), Department of Agriculture

Subchapter B—Sugar Requirements and Quotas

[Sugar Reg. 814.20]

PART 814—ALLOTMENT OF SUGAR QUOTAS

MAINLAND CANE SUGAR AREA, 1953

Basis and purpose. This allotment order is issued under section 205 (a) of the Sugar Act of 1948, as amended (hereinafter called the "act") for the purpose of allotting the 1953 sugar quota for the mainland cane sugar area. The basis and purpose of the order are more fully explained below.

Omission of recommended decision and effective date. The record of the hearing regarding the allotment of the 1953 quota for the mainland cane sugar area shows that 198,000 tons of sugar produced from 1952-crop cane have been available for marketing in 1953, and that marketings of new crop sugar in 1953 equal to the average for 1948–52 would bring total marketings for the year to about 539,000 tons, or 39,000 tons in excess of the quota. (An increase in the quota amounting to 9,760 tons was announced on August 7, reducing the prospective excess to about 30,000 tons.) Many of the allottees under this order customarily begin making commitments in August for the sale and delivery of their production of sugar beginning in October. In some cases only a small quantity of new crop sugar is required to fill the allotments. Since this proceeding was instituted for the purpose of issuing allotments to prevent disorderly marketing of sugar and to afford all persons an equitable opportunity to market sugar, it is imperative that this order be effective as soon as possible. Accordingly, it is found that due and timely execution of the functions imposed upon the Secretary under the act imperatively and unavoidably requires the omission of a recommended decision in this proceeding. It is further found that compliance with the 30-day effective date requirement of the Administrative Procedure Act (60 Stat. 237) is impracticable and contrary to the public interest and consequently this order shall be effective when published in the FEDERAL REGISTER.

Preliminary statement. Section 205 (a) of the act requires the Secretary to allot a quota whenever he finds that the allotment is necessary, among other things, to (1) prevent disorderly marketing of sugar or liquid sugar and (2) afford all interested persons an equitable opportunity to market sugar or liquid sugar. Section 205 (a) also requires that such allotment be made after such hearing and upon such notice as the Secretary may prescribe.

Pursuant to the applicable rules of practice and procedure (7 CFR 801.1 et seq.) a notice was issued on June 11, 1953, of a public hearing to be held at New Orleans, Louisiana, on June 23, 1953, for the purpose of receiving evidence to enable the Secretary to make a fair, efficient and equitable distribution of the 1953 sugar quota for the mainland cane sugar area.

As stated above the act requires a preliminary finding of necessity for allotment of a quota as a condition precedent

(Continued on p. 5291)

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FEDERAL REGISTER

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

to the calling of a hearing. Accordingly, the notice of hearing issued by the Secretary provided in part as follows:

Pursuant to the authority contained in the Sugar Act of 1948 (61 Stat. 922, as amended by 65 Stat. 318; 7 U. S. C. Sup. 1100), in accordance with the applicable rules of practice and procedure (7 CFR 891.1 et seq.), and on the basis of information before me, I do hereby find that the allotment of the 1953 sugar quota for the Mainland Cane Sugar Area is necessary to prevent disorderly marketing and to afford all interested persons an equitable opportunity to market sugar, and hereby give notice that a public hearing will be held at the Hotel Monteleone, New Orleans, Louisiana, on June 23, 1953, beginning at 10:00 a. m., c. s. t.

Summary of testimony. With respect to the necessity for allotment of the 1953 sugar quota for the mainland cane sugar area, the government witness testified that the supply of sugar available for marketing in 1953 which was produced from 1952-crop sugarcane, together with the marketing of an average quantity of new crop sugar to be produced in 1953 after the date of the hearing would result in marketings in excess of the quota (R. 23) This testimony on the necessity for allotments was not controverted by any witness.

With respect to the manner in which the allotments should be made, the government witness proposed that equal weight be given to each processor's percentage of (1) sugar produced from 1952-crop mainland sugarcane, (2) marketings of mainland cane sugar 1948 through 1952, excluding data for the year of smallest and the year of largest marketings for each processor and (3) the sum of the largest marketings for each processor in any of the years 1948 through 1952 (R. 29). The weighted percentage for each processor would be applied to the quota for the area to determine the processor's allotment. In a few cases the resulting allotments were less than the quantity of sugar already marketed by the allottee. To meet the requirements of law that the sum of the allotments may not exceed the quota, the government witness proposed that the quantity marketed prior to the issuance of the allotment order be the allotment in cases where such marketings exceed the allotments determined by applying the percentage computed as stated above to the area quota and that the percentages for other allottees computed as stated above be applied to the portion of the quota remaining after deducting the sum of the allotments so determined (R. 32).

The representative of 37 of the 51 processors proposed that the allotments as determined under the government proposal be reduced by not to exceed 5.4 percent and that the sum of such reductions should be added to the allotments of certain processors in proportion to the quantities by which their stocks on January 1, 1953, exceeded their average stocks for that date in 1948–52. This witness also proposed that the allotment order permit any processor receiving an allotment to transfer or assign such allotment in whole or in part subject to approval of a representative of the Secretary to any other processor allotted a quota under the determination. He testified that the provision was necessary to maintain an efficient distribution of a quota in relation to the location of the cane to be ground in case some contigency interfered with the operation of the mill of an allottee (R. 67). He also proposed that the provisions of Sugar Regulation 816, Amendment 1, pertaining to sugar produced in the mainland cane sugar area be continued and made a part of the allotment order (R. 69).

Representatives for three processors testified in opposition to the adjustment for excess stocks on the basis that the mere existence of such an excess was not an adequate test of the existence of a hardship (R. 115, 129)

One processor requested that different years be used to measure the factors for it (R. 106)

The representative of one processor proposed that the allotment be established in terms of a percentage of the sugar processed from the sugarcane delivered by each producer (R. 121)

The representative of one processor, party to the group testimony cited above, submitted separate testimony intended to establish the facts relating to his operation and supporting a claim of hardship under the government proposal which would be relieved by the proposal for an adjustment on the basis of excess stocks (R. 126)

The representative of one processor submitted evidence purporting to establish that the facts of its organization and expansion would result in an unfair allotment under the proposals made (R. 132)

Representatives of nine processors submitted evidence purporting to correct data previously submitted by them and accepted by the Department as official data on production, marketing and stocks of sugar which the Department had proposed for use as a basis for computing allotments (R. 86, 92, 95, 98, 101, 103, 106, 110, 130)

Of the 51 allottees, 47 stipulated for the record at the hearing (R. 141–147) or subsequently in writing, as follows:

1. To give effect to any change in the 1953 sugar quota for the mainland cane area made after the issuance of the initial allotment order, such order shall be revised without further hearing, using the same allotment formula and method of adjustment as was used in the initial order.

2. Subject to the provision of Paragraph 3 of this stipulation, if any allottee notifies the Department in writing that it will be unable to fill its 1953 allotment, an amount of sugar equal to such deficit shall be allotted, without further hearing and without change in the original allotment formula and method of adjustment, to other allottees able to supply the additional sugar.

3. Any allottee shall be authorized subject to approval of the duly authorized representative of the Secretary of Agriculture to transfer or assign such portion of the quota allotted to him in whole or in part to any other allottee.

4. That there be incorporated in the Determination of Marketing Allotments for the year 1953, provisions permitting the processing of excess-quota sugar under bond and the marketing of excess-quota sugar, all in the manner prescribed in Sugar Regulations Part 816 as amended, and particularly §§ 816.1, 816.2, 816.3, 816.4, 816.5, which Part is entitled "Excess-Quota Sugar," and was issued by the Secretary of Agriculture on the 27th day of April, 1949, and appears in 14 F. R. 2163.

5. That there be alloted to the Louisiana State University for its experimental Sugar Factory at Baton Rouge, Louisiana, 150 tons of quota regardless of the allotment to which it would be entitled under the allotment formula.

6. Each allotee waives its (his) right to object to the validity of the 1953 allotment order by reason of any action taken by the Secretary of Agriculture in conformity with the provisions of this stipulation hereinabove set out in paragraphs one to five, inclusive; provided, however, such waiver shall not preclude any allotee from contesting the validity of any other feature or provisions of said allotment order, or any other action taken by the Secretary of Agriculture thereunder or with respect thereto.

One additional allotee submitted the above stipulation in writing following the hearing at the end of which had been added, "Right to approve all quotas entirely is expressly reserved."

Basis of allotment. Section 205 (a) of the act reads in pertinent part as follows:

• • • Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the proceedings of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of

subsection (b) of section 302, pertained; the past marketings or importations of each such person; and the ability of such person to market or import that portion of such quota or proration thereof allotted to him. * * *

All three factors specified in the foregoing provision of law have been considered and each is given a percental weight by the formula on which this allotment of the 1953 sugar quota for the mainland cane sugar area is based. Under this formula the factors are measured as follows and weighted equally: processings from sugarcane to which proportionate shares pertained, measured by the production of sugar from 1952-crop sugarcane by each allottee; past marketings, measured by the average marketings of each allottee in the three years remaining after excluding data for the year of smallest and the year of largest marketings in the period 1948 through 1952; ability to market, measured by the largest marketings for each processor in any of the years 1948 through 1953. There was general agreement at the hearing regarding the suitability of these measures and weightings of the factors.

The general method of allotment is applied to the balance of the quota remaining after establishing quantities for two allottees as explained below. An allotment for Louisiana State University is set at 150 tons to insure continuation of research important to the other allottees. Such an allotment was proposed in the hearing by many of the allottees and there was no testimony in opposition. The allotment for Okeelanta Sugar Refinery, Inc., is established at 10,355 short tons, raw value, the quantity marketed in 1953 by March 31. There was no additional marketings by that allottee prior to the issuance of this order. This quantity is greater than the allotment that would be established by the general method but the difference cannot be included in other allotments because to do so would authorize marketings in excess of the quota. The necessity for this departure from the general method was stated in the hearing by the government witness and no satisfactory alternative was proposed.

Accordingly, the quota of 509,760 tons, less the quantities for Louisiana State University and Okeelanta Sugar Refinery Inc., totaling 10,505 tons, or 499,255 short tons, is allotted to the remaining 49 processors by the general method outlined above.

The data used herein for application of the method of allotment adopted are those appearing in Exhibit 5 in the hearing record except for correction of the marketing data for years affecting the computation established in the record by two processors.

Of the nine processors who testified at the hearing regarding corrections of data, two established that changes submitted by them were disclosed by audits. In one case premature cut-off dates had been used in the original reports and a physical inventory disclosed smaller stock on January 1, 1953, than had been computed from reports of production and marketings. The corrected data are used in making the allotment herein. The second case corrected the omission from the original report of a quantity produced and marketed in 1950. Six processors requested corrections for "constructive deliveries" not previously so reported by them and, therefore, accounted for in different years in the government data presented in the hearing. The documents placed in the record do not fully meet the requirements of "constructive delivery" as set forth in Sugar Regulation 815 (13 F R. 1076) in any of these cases. The contracts did not permit the seller to make actual delivery of the entire quantities in the years to which delivery would be attributed or there were no acknowledgements by the there were no acknowledgments by the the buyer executed within the applicable quota year to establish that the quantities were held for and on behalf of the buyer, as required by the regulation. In the remaining case the processor propóposed to count as marketings movement to its own refinery of the raw sugar it produced at other locations. No contracts are claimed to be involved which could qualify such movements as deliveries against sales contracts as required by Sugar Regulation 815.

Testimony supporting a different result than that attained in this order dealt primarily with adjustment of allotments determined by the method used in the order. The purpose of such adjustments would be to increase those of 12 processors who had stocks on January 1, 1953, which exceeded their average January 1 stocks for the years 1948–52 by a total of 27,000 tons. This quantity is 5.4 percent of the total quota for the area. The testimony sets this percentage as the maximum reduction for any allotment. The reduction of all allotments by this percentage and the allotment of the equivalent quantity to offset all excess stocks of the 12 "hardship cases" would result in smaller allotments for 5 of these 12 than their unadjusted allotments, while the allotments of the other 7 would be increased by a total of 14,000 tons. While this proposal appears to measure "hardship" by the full amount of the excess over average stocks, no allotment would be increased by the full amount. At the same time, other allotments would be reduced by a uniform percentage whether stocks were exactly average or far below it. Of the processors whose allotments would be reduced 5.4 percent by the proposal 32 had significantly less than average stocks on January 1, 1953, and 22 had none at all on that date. Furthermore, although total stocks on January 1, 1953, were 18 percent larger than average only 9 of the "hardship cases" had stocks which were larger than average by much more than the average percentage.

Provision is made for the transfer of allotments under circumstances deemed necessary to insure the processing of all sugarcane to which proportionate shares pertain. The geographical distribution of sugarcane acreage and mills, differences in the operating conditions of various mills and marketing practices for sugarcane in some parts of the area, appear to make such a provision necessary. It was proposed on behalf of many processors and no testimony appears in opposition to it.

The substance of the provision of section 3 of Sugar Regulation 816 is included in § 814.20 (c) of this part so that this section continues its applicability in the Mainland Cane Sugar area if deleted from Part 816 as has been proposed. Assurance that this provision would continue to apply to this area was requested by various processors at the hearing and no evidence was presented against it.

Findings and conclusions. On the basis of the record of the hearing, I hereby find and conclude that:

(1) For the calendar year 1953 Mainland Cane Sugar processors will have available for marketing a quantity of sugar which exceeds the 1953 quota for the area and that average marketings of new-crop sugar in the remainder of 1953 would exceed the quota allotted herein by about 30,000 tons.

(2) The allotment of the 1953 Mainland Cane Sugar area quota is necessary to prevent disorderly marketing and to afford all interested persons equitable opportunities to market sugar processed from sugarcane produced in that area.

(3) To assure a fair, efficient and equitable distribution of the Mainland Cane Sugar area quota for 1953 the three statutory standards should be weighted equally.

(4) Processings of sugar from 1952-crop sugarcane constitutes a fair and equitable measure of "processings from proportionate shares."

(5) A fair and equitable measure of past marketings for each processor is the average of such marketings for the three years remaining from the period 1948–52 after excluding the year of largest and the year of smallest marketings.

(6) The largest marketings in any year of the period 1948–52 for each processor is a fair and equitable measure of ability to market.

(7) The quantities of sugar referred to in (4) (5) and (6) above are as set forth in the following table:

SHORT TONS, RAW VALUE

Processor	Sugar produced from 1952-crop cane	Average annual marketings 1948-52, excluding largest and smallest years	Largest annual marketings any year 1948-52
Albania Sugar Coop., Inc.	6,040	5,240	7,250
Alice C. Refinery and Plantation, Inc.	7,181	6,333	8,005
Alma Plantation, Ltd.	6,518	7,019	7,781
J. Aron & Co., Inc.	12,120	11,279	12,129
Billeaud Sugar Factory	8,315	8,517	9,777
Breaux Bridge Sugar Coop., Inc.	7,733	6,635	7,760
Burton-Sutton Oil Co., Inc.	5,901	5,193	7,512
Cairo & Graugnard	3,013	4,011	4,818
Caldwell Sugar Coop., Inc.	10,699	8,010	8,599
Catherine Sugar Co., Inc.	6,154	6,160	6,907
Columbia Sugar Co.	5,301	3,990	5,699
Cora-Texas Manufacturing Co.	2,346	2,338	3,601
Cypremort Sugar Co., Inc.	5,553	4,688	6,210
Dugas & LeBlanc, Ltd.	10,504	9,780	12,370
Duhe & Bourgeois Sugar Co., Inc.	7,693	7,514	10,274
Erath Sugar Co., Ltd.	5,028	5,381	6,325
Evan Hall Sugar Coop., Inc.	19,620	17,701	20,589
Evangeline Pepper & Food Prod.	6,130	5,762	6,733
Fellsmere Sugar Prod. Association	10,242	8,200	9,842
Frisco Cane Co., Inc.	718	645	860
Glenwood Coop., Inc.	9,337	7,332	12,052

SHORT TONS, RAW VALUE—Continued

Processor	Sugar produced from 1952-crop cane	Average annual marketings 1948-52, excluding largest and smallest years	Largest annual marketings any year 1948-52
Godchaux Sugars, Inc.	36,936	22,635	42,833
Helvetia Sugar Coop., Inc.	6,225	5,704	8,368
Iberia Sugar Coop., Inc.	13,593	12,517	17,902
LaFourche Sugar Co.	13,605	10,674	13,605
Harry L. Laws & Co., Inc.	8,387	8,083	10,225
Levert-St. John, Inc.	10,193	9,204	13,949
Loisel Sugar Co.	6,041	5,881	8,150
Louisiana State Penitentiary	2,849	3,731	5,844
Louisiana State University	78	95	218
Lulu Plantation	10,783	10,373	13,936
Meeker Sugar Coop., Inc.	2,875	5,188	6,334
Milliken & Farwell, Inc.	11,349	9,413	12,407
Okeelanta Sugar Refinery, Inc.	15,335	4,241	11,871
M. A. Patout & Son, Ltd.	7,699	7,483	10,751
Poplar Grove Planting & Refining Co.	5,779	5,767	6,844
E. G. Robichaux Co., Ltd.	4,079	3,549	5,041
St. James Sugar Coop., Inc.	11,197	9,889	11,419
St. Mary Sugar Coop., Inc.	15,594	11,691	15,594
Slack Bros., Inc.	3,068	2,899	3,606
Smedes Bros., Inc.	5,156	4,033	5,156
South Coast Corp.	41,075	35,582	41,236
Southdown Sugars, Inc.	40,529	30,695	43,218
Sterling Sugars, Inc.	8,211	9,345	14,866
J. Supple's Sons Planting Co.	3,849	3,776	4,539
United States Sugar Corp.	128,838	93,489	107,499
Valentine Sugars, Inc.	12,176	9,303	10,390
Vermilion Sugar Co.	3,039	2,751	3,274
Vida Sugars, Inc.	5,433	4,755	5,433
A. Wilbert's Sons Lbr. & Sh. Co.	8,177	7,144	8,177
Young's Industries, Inc.	8,215	5,512	8,325
Total	606,534	504,534	647,634

(8) An efficient distribution of the quota requires a provision permitting the transfer of allotments deemed necessary to assure the processing of all proportionate shares sugarcane.

(9) Allotments established in the foregoing manner and in the amounts set forth in the order provide a fair, efficient and equitable distribution of the quota, as required by section 205 (a) of the act.

Order Pursuant to the authority vested in the Secretary of Agriculture by section 205 (a) of the act, it is hereby ordered:

§ 814.20 *Allotment of the 1953 sugar quota for the Mainland Cane Sugar Area*—(a) *Allotments.* The 1953 sugar quota for the Mainland Cane Sugar Area is hereby allotted to the following processors in amounts which appear opposite their respective names:

SHORT TONS, RAW VALUE

Processor:	*Allotment*
Albania Sugar Coop., Inc.	5,342
Alice C. Refinery and Plantation, Inc.	6,485
Alma Plantation, Ltd.	6,206
J. Aron & Co., Inc.	10,340
Billeaud Sugar Factory	7,733
Breaux Bridge Sugar Coop., Inc.	6,415
Burton-Sutton Oil Co., Inc.	5,362
Caire & Graugnard	3,455
Caldwell Sugar Coop., Inc.	7,903
Catherine Sugar Co., Inc.	5,592
Columbia Sugar Co.	4,304
Cora-Texas Mfg. Co.	2,381
Cypremort Sugar Co., Inc.	4,758
Dugas & LeBlanc, Ltd.	9,451
Duhe & Bourgeois Sugar Co. Inc.	7,354
Erath Sugar Co., Ltd.	4,263
Evan Hall Sugar Coop., Inc.	16,835

SHORT TONS, RAW VALUE—Continued

Processor—Continued	*Allotment*
Evangeline Pepper & Food Prod.	5,407
Fellsmere Sugar Prod. Association	8,183
Frisco Cane Co., Inc.	639
Glenwood Coop., Inc.	8,352
Godchaux Sugars, Inc.	31,473
Helvetia Sugar Coop., Inc.	5,841
Iberia Sugar Coop., Inc.	12,676
LaFourche Sugar Co.	10,944
Harry L. Laws & Co., Inc.	7,723
Levert-St. John, Inc.	9,536
Loisel Sugar Co.	5,781
Louisiana State Penitentiary	3,575
Louisiana State University	159
Lulu Plantation	10,140
Meeker Sugar Coop., Inc.	4,194
Milliken & Farwell, Inc.	9,576
Okeelanta Sugar Refinery, Inc.	10,355
M. A. Patout & Son, Ltd.	7,474
Poplar Grove Planting & Refining Co.	5,337
E. G. Robichaux Co., Ltd.	3,645
St. James Sugar Coop., Inc.	9,431
St. Mary Sugar Coop., Inc.	12,132
Slack Bros., Inc.	2,759
Smedes Bros., Inc.	4,154
South Coast Corp.	34,533
Southdown Sugars, Inc.	32,941
Sterling Sugars, Inc.	9,311
J. Supple's Sons Planting Co.	3,530
United States Sugar Corp.	95,522
Valentine Sugars, Inc.	9,240
Vermilion Sugar Co.	2,646
Vida Sugars, Inc.	4,533
A. Wilbert's Sons Lbr & Sh. Co.	6,820
Young's Industries, Inc.	6,325
All other persons	-------
Total	503,760

(b) *Transfer of allotment.* When approved in writing by the Director, Sugar Branch, Production and Marketing Administration of the Department, allotments made in paragraph (a) of this section may be transferred, in whole or in part, to another allottee thereunder upon a showing that the transferee has processed or will process 1953 crop sugarcane because of inability of the transferor, arising subsequent to the processing of the 1952 crop, to process the tonnage of sugarcane which otherwise would be processed by him.

(c) *Exchanges of sugar between allottees.* When approved in writing by the Director of the Sugar Branch, or the Chief of the Quota and Allotment Division thereof, Production and Marketing Administration of the Department, any allottee holding sugar or liquid sugar acquired by him within the allotment of another person established in paragraph (a) of this section, may ship, transport or market an equivalent quantity of sugar processed by him in excess of his allotment established in paragraph (a) of this section. The sugar or liquid sugar held under this paragraph shall be subject to all other provisions of this section as if it had been processed by the allottee who acquired it for the purpose authorized by this paragraph.

(d) *Restrictions on shipment and marketing.* Pursuant to section 209 of the act, and subject to the applicable provisions of Sugar Regulation 816 (14 F. R. 2163), all persons are hereby prohibited, during the calendar year 1953, from shipping, transporting or marketing in interstate commerce or in competition with sugar or liquid sugar in interstate or foreign commerce, any sugar or liquid sugar produced from sugarcane grown in the mainland cane sugar area after the allotment established for such persons in paragraph (a) of this section has been filled.

(Sec. 403, 61 Stat. 932; 7 U. S. C. Sup. 1153. Interprets or applies sec. 205, 61 Stat. 926; 7 U. S. C. Sup. 1115)

Done at Washington, D. C., this 28th day of August 1953. Witness my hand and the seal of the Department of Agriculture.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-7662; Filed, Sept. 1, 1953; 8:48 a. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Bureau of Animal Industry, Department of Agriculture

Subchapter C—Interstate Transportation of Animals and Poultry

PART 76—HOG CHOLERA, SWINE PLAGUE, AND OTHER COMMUNICABLE SWINE DISEASES

SUBPART B—VESICULAR EXANTHEMA

MOVEMENT OF SWINE AND SWINE PRODUCTS FROM A QUARANTINED AREA

Pursuant to the authority conferred by sections 1 and 2 of the act of February 2, 1903, as amended (21 U. S. C. 111, 120) § 76.30 (a) (2) of the regulations restricting the interstate movement of swine and certain swine products because of vesicular exanthema (18 F. R. 3636, 3829, as amended) is hereby amended by adding thereto the following proviso: *"Provided, however* That such swine may be moved interstate under this subpart from any public stockyard in a non-quarantined area without such a certificate."

The foregoing amendment relieves restrictions no longer deemed necessary to prevent the spread of vesicular exanthema and should be made effective promptly in order to be of maximum benefit to affected shippers of swine. Accordingly, under section 4 of the Administrative Procedure Act (5 U. S. C. 1004), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest. Since the amendment relieves restrictions, it may be made effective under said section 4 less than 30 days after its publication in the FEDERAL REGISTER.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 3, 33 Stat. 1264, as amended, 1265, as amended; 21 U. S. C. 120, 111, 123, 125. Interprets or applies sec. 7, 23 Stat. 32, as amended; 21 U. S. C. 117)

The foregoing amendment shall become effective September 1, 1953.

Done at Washington, D. C., this 28th day of August 1953.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 53-7631; Filed, Sept. 1, 1953; 8:52 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 44]

PART 610—MINIMUM EN ROUTE IFR ALTITUDES

MISCELLANEOUS AMENDMENTS

The minimum en route IFR altitudes appearing hereinafter have been coordinated with interested members of the industry in the regions concerned insofar as practicable. The altitudes are adopted without delay in order to provide for safety in air commerce. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required. Part 610 is amended as follows:

1. Section 610.15 *Green civil airway No. 5* is amended to read in part:

From—	To—	Minimum altitude
Millville, N. J. (LFR)	Ambrose (INT), N. J.	1,500
Ambrose (INT), N. J.	Mitchel AFB, N. J. (LFR).	1,500
Mitchel AFB, N. J. (LFR).	St. James (INT), N. J.	1,500

2. Section 610.218 *Red civil airway No. 18* is amended to read in part:

From—	To—	Minimum altitude
Int. NW crs. Indianapolis, Ind. (LFR) and NW crs. Cincinnati, Ohio (LFR).	Greenfield, (INT) Ind.	2,200

3. Section 610.219 *Red civil airway No. 19* is amended by adding:

From—	To—	Minimum altitude
Wellington, Ohio (VAR).	Akron, Ohio (LFR)	2,500
Akron, Ohio (LFR)	Wheeling, W. Va. (INT).	2,500

4. Section 610.262 *Red civil airway No. 62* is amended to eliminate:

From—	To—	Minimum altitude
Lansing, Mich. (LFR)	Manchester (INT), Mich.	2,300
Wellington, Ohio (VAR).	Akron, Ohio (LFR)	2,500
Akron, Ohio (LFR)	Wheeling, W, Va. (INT).	2,500

5. Section 610.263 *Red civil airway No. 63* is amended to read in part:

From—	To—	Minimum altitude
Salem, Mich. (VAR)	Warren (INT), Mich.	2,700

6. Section 610.281 *Red civil airway No. 81* is amended by adding:

From—	To—	Minimum altitude
Lansing, Mich. (LFR)	Manchester (INT), Mich.	2,300

7. Section 610.6012 *VOR civil airway No. 12* is amended to read in part:

From—	To—	Minimum altitude
Columbus, Ohio (VOR).	Wheeling, W. Va. (VOR).	3,000
Wheeling, W. Va. (VOR).	Pittsburgh, Pa. (VOR).	3,000

8. Section 610.6012 *VOR civil airway No. 12* is amended to eliminate:

From—	To—	Minimum altitude
Columbus, Ohio (VOR) via S. alter.	Pittsburgh, Pa. (VOR) via S. alter.	3,400

9. Section 610.6098 *VOR civil airway No. 98* is amended to eliminate:

From—	To—	Minimum altitude
San Francisco, Calif. (VOR).	Coalinga, Calif. (VOR).	7,000
Coalinga, Calif. (VOR).	Bakersfield, Calif. (VOR).	3,000

10. Section 610.6107 *VOR civil airway No. 107* is amended by adding:

From—	To—	Minimum altitude
Bakersfield Calif. (VOR).	Coalinga, Calif. (VOR).	3,000
Coalinga, Calif. (VOR).	San Francisco, Calif. (VOR).	7,000

11. Section 610.6123 *VOR civil airway No. 123* is amended by adding:

From—	To—	Minimum altitude
Newport, Oreg. (VOR).	Newberg, Oreg. (VOR).	5,500

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

These rules shall become effective September 8, 1953.

[SEAL] S. A. KEMP
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 53-7651; Filed, Sept. 1, 1953; 8:45 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter XVIII—National Shipping Authority, Maritime Administration, Department of Commerce

[NSA Order No. 46 (SRM-5, Revised]

SRM-5—PROCEDURE FOR ACCOMPLISHMENT OF VESSEL REPAIRS UNDER NATIONAL SHIPPING AUTHORITY MASTER LUMP SUM REPAIR CONTRACT—NSA-LUMPSUMREP

CORRECTION

Paragraph (b) of section 16, *Liquidated damages,* contained in NSA Order No. 46 (SRM-5, revised) published in FEDERAL REGISTER issue of August 22, 1953 (18 F R. 5035) is corrected as follows:

The form number "(MA-195)" appearing in the fourth sentence of paragraph (b) of section 16 is hereby deleted and form number "(MA-159)" is inserted in lieu thereof.

Approved: August 26, 1953.

C. H. MCGUIRE,
Director,
National Shipping Authority.

[F. R. Doc. 53-7666; Filed, Sept. 1, 1953; 8:49 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 913]

ALASKA

PARTIALLY REVOKING PUBLIC LAND ORDER NO. 585 OF APRIL 14, 1949

By virtue of the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141) and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F R. 4831), it is ordered as follows:

1. Public Land Order No. 585 of April 14, 1949, withdrawing the public lands within certain described areas in Alaska for classification and examination and in aid of legislation, which was revoked in part by Public Land Orders No. 800 of February 1, 1952, No. 812 of March 10, 1952, No. 820 of April 28, 1952, and No. 846 of June 26, 1952, is also revoked so far as it affects the following-described lands:

HOMER AREA, SEWARD MERIDIAN

T. 5 S., R. 11 W.,
Secs. 7, 8, 9, 16, 17, 18, 19, and 20.
T. 5 S., R. 12 W.,
Secs. 1 and 2;
Secs. 9 to 17, inclusive;
Secs. 19 to 28, inclusive;
Secs. 33, 34 and 35.
T. 6 S., R. 12 W.,
Sec. 4.

The areas described aggregate 17,270 31 acres, including public and non-public lands.

NINILCHIK AREA, SEWARD MERIDIAN

T. 1 S., R. 13 W.,
Sec. 30, lots 1 and 4, NE¼NE¼, and NE¼NW¼,
Sec. 31, E½.
T. 1 S., R. 14 W.,
Sec. 12;
Sec. 13, lots 1, 2, and 3, N½NE¼, and S½S½,
Sec. 14;
Sec. 23, lots 1, 2, 3, and 4, SE¼NE¼, and NW¼SE¼,
Sec. 24, N½NE¼, NW¼, E½SE¼, and SW¼SE¼,
Sec. 25, N½NW¼, SW¼NW¼, and SW¼SW¼,
Sec. 26, lots 1 and 2, SE¼NW¼, N½SW¼, W½SW¼SW¼SW¼, and NE¼SE¼,
Secs. 27 and 33;
Sec. 34, lots 1 and 7, E½NE¼, SE¼, and U. S. Survey No. 3036, tracts A and B;
Sec. 35, W½NW¼ and SW¼,
Sec. 36, E½NW¼.
T. 2 S., R. 14 W.,
Sec. 1, NE¼SW¼, E½SE¼, and NW¼SE¼,
Sec. 2, lots 1, 2, and 3, S½NW¼, SW¼, and S½SE¼,
Sec. 3, lots 3 and 4, SW¼NE¼, S½NW¼, and S½,
Secs. 4 and 8;
Sec. 9, lots 1, 2, 3, and 4, E½W½, and SW¼SE¼,
Sec. 10, N½, N½SW¼, SE¼SW¼, and SE¼,
Sec. 11, W½,
Sec. 13, N½NE¼, NW¼, and W½SW¼,
Sec. 14, E½, N½NW¼, and SE¼NW¼,
Sec. 15, N½NE¼, NW¼, N½SW¼, and SW¼SW¼,
Sec. 16, E½E½ and W½W½,
Sec. 17.

The areas described, including public and non-public lands, aggregate 7,276.11 acres.

Sections 16 and 36 are reserved for the support of the common schools in Alaska, pursuant to the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354).

2. Except as to their release from withdrawal by paragraph 1 hereof, the following-described public lands shall not become subject to the initiation of any rights or to any disposition under the public-land laws until it is so provided by an order of classification to be issued by an authorized officer opening the lands to application under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U. S. C. 682a), as amended, with a ninety-one day preference-right period for filing such applications by veterans of World War II and others entitled to preference, or providing for the disposal of the lands under the provisions of the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a et seq.).

HOMER (FRITZ CREEK) AREA, SEWARD MERIDIAN

T. 5 S., R. 11 W.,
Secs. 19 and 20,
T. 5 S., R. 12 W.,
Sec. 24, lot 1 and NE¼SE¼,
Sec. 26, lots 1, 2, and 3, NE¼SW¼, W½SW¼, and NW¼SE¼,
Sec. 34, lots 1 and 2, N½NE¼, and SW¼NE¼,
Sec. 35, lots 1 and 2.

The areas described aggregate 862.01 acres.

NINILCHIK AREA, SEWARD MERIDIAN

T. 1 S., R. 14 W.,
Sec. 12, lot 1;
Sec. 23, lots 3 and 4;
Sec. 26, lot 1, N½SW¼, and SE¼NW¼.
T. 2 S., R. 14 W.,
Sec. 9, lot 2;
Sec. 17, lots 1, 2, 3, and 4, and SE¼SE¼.

The areas described aggregate 490.55 acres.

3. The public lands in the Ninilchik area described in paragraph 1 of this order, excepting such lands described in paragraph 2, are unsuitable for cultivation or as pasturage because they are either too swampy or too rough. The public lands in the Homer area described in paragraph 1 of this order, excepting such lands described in paragraph 2, have a rough topography and are mostly inaccessible.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, and selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order other than those described in paragraph 2 thereof, shall be subject only to (1) application under the homestead laws or the Alaska Home Site Act of May 26, 1934, 48 Stat. 809 (48 U. S. C. 461), or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a) as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284) as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides) of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land Office, Bureau of Land Management, Anchorage, Alaska, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 65 and 66 of Title 43 of the Code of Federal Regulations, and applications under the said Alaska Home Site Act of May 26, 1934, and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in §§ 64.6 to 64.10, inclusive, and Part 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the Manager, Land Office, Anchorage, Alaska.

ORME LEWIS,
Assistant Secretary of the Interior

AUGUST 26, 1953.

[F. R. Doc. 53-7654; Filed, Sept. 1, 1953; 8:46 a. m.]

[Public Land Order 914]

WYOMING

RESERVING CERTAIN PUBLIC LANDS IN CONNECTION WITH SHERIDAN COUNTY ELK WINTER PASTURE

Whereas the act of September 2, 1937 (50 Stat. 917; 16 U. S. C. 669–669j) provides for Federal aid to States in wildlife-restoration projects; and

Whereas the State of Wyoming has established a Federal-aid wildlife-restoration project and has acquired title to certain lands in Sheridan County which are administered by the State of Wyoming through its Game and Fish Commission as the Sheridan County Elk Winter Pasture; and

Whereas certain public lands of the United States within the project possess wildlife value and could be administered advantageously in connection therewith; and

Whereas the act of March 10, 1934, as amended by the act of August 14, 1946 (48 Stat. 401, 60 Stat. 1080; 16 U. S. C. 661–666c) authorizes the Secretary of the Interior to cooperate with Federal, State, and other agencies in developing a nationwide program of wildlife conservation and rehabilitation;

Now, therefore, by virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of

May 26, 1952 (17 F R. 4831) it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Sheridan County, Wyoming, are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining laws but not the mineral-leasing laws, and reserved under the jurisdiction of the Department of the Interior under such conditions as may be prescribed by the Secretary of the Interior, for use by the Game and Fish Commission of the State of Wyoming in connection with the Sheridan County Elk Winter Pasture:

SIXTH PRINCIPAL MERIDIAN

T. 58 N., R. 89 W.,
Sec. 27, SE¼SW¼,
Sec. 34, SW¼NE¼, SW¼NW¼, and NW¼SE¼.

The areas described aggregate 160.00 acres.

ORME LEWIS,
Assistant Secretary of the Interior

AUGUST 27, 1953.

[F R. Doc. 53-7652; Filed, Sept. 1, 1953; 8:46 a. m.]

TITLE 46—SHIPPING

Chapter II—Federal Maritime Board, Maritime Administration, Department of Commerce

Subchapter B—Regulations Affecting Maritime Carriers and Related Activities

[Gen. Order 58, 2d Rev., Supp. I]

PART 221—DOCUMENTATION, TRANSFER OR CHARTER OF VESSELS

DEPARTURE FROM UNITED STATES PORT

Section 221.5 (e) of General Order 58, 2d Revision, published in the FEDERAL REGISTER issue of June 16, 1951 (16 F R. 5768) is hereby superseded and revised to read as follows:

(e) The departure from a United States port, without any transfer to foreign ownership or registry being involved, whether to another United States port or to a foreign port, before it has been documented under the laws of the United States, of any vessel owned by a citizen or citizens of the United States, constructed in whole or in part within the United States, which has never cleared for any foreign port:

(1) Regardless of size, to be used wholly for pleasure;

(2) Of less than five (5) net tons, for use in fisheries or trade.

(Sec. 19, 41 Stat. 995, sec. 204, 49 Stat. 1987, as amended; 46 U. S. C. 1114, 876. Interprets or applies sec. 37, 40 Stat. 901, as amended; 46 U. S. C. 835)

Effective date: This order shall be effective on the date of publication in the FEDERAL REGISTER.

Dated: August 20, 1953.

[SEAL] LOUIS S. ROTHSCHILD,
Maritime Administrator Maritime Administration, Department of Commerce.

[F. R. Doc. 53-7667; Filed, Sept. 1, 1953; 8:49 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 10329]

PART 1—PRACTICE AND PROCEDURE

PART 8—STATIONS ON SHIPBOARD IN THE MARITIME SERVICE

MISCELLANEOUS AMENDMENTS

In the matter of proposed revision of FCC Form 501, Application for Ship Radio Station License, and the deletion of Forms 500, Ship Radio Station Equipment, 501-B, Application for Ship Radar Station License, and 503, Application for Modification of Ship Radio Station License, and the proposed amendment of Table showing forms currently in effect and where they are referred to in Part 1 of the rules, and amendment of Part 1, Practice and Procedure, and Part 8, Stations on Shipboard in the Maritime Service, Docket No. 10329.

These proceedings were instituted on October 15, 1952, by notice of proposed rule making (Docket 10329) proposing the use of a revised three-part application form (FCC Form 501, Application for Ship Radio Station License) which would entirely supplant present FCC Forms 500, 501, 501-B, 503, 551 and 551-B, and combine with it, for vessels having multiple radio installations, the functions of present FCC Forms 501-A and 551-A.

FCC Form 501 was revised primarily to accommodate the new frequency column symbols appearing in Appendix III of Part 8 of the Commission's rules, which provides for the assignment of radiotelegraph frequencies between 2000 ks and 23,000 kc and radiotelephone frequencies between 4000 kc and 23,000 kc. Secondarily, in order to reduce the administrative expense of processing multiple applications for the several types of radio installations aboard some vessels, the application, record copy, and license portions were designed to accommodate all frequencies requested for all vessels.[1]

FCC Form 501 must therefore be used by applicants for radiotelegraph frequencies, HF radiotelephone frequencies, special emissions and frequencies, or wherever several classes of stations aboard the same vessel (such as radiotelephone and radar) are controlled by one applicant. Since the same form may be used both for new licenses and modifications, only one other ship application form is being retained for mandatory use (FCC Form 405-A, Application for Renewal of Radio License (Short Form)) In addition, FCC Form 501-A, Application for Ship Radiotelephone Station License (Short Form) has been revised so that the numbering plan corresponds with the revised long form. Form 501-A may be used as an optional application form for radiotelephone frequencies in one or more of the bands 1600-3500 kc, 30-40 Mc and 152-162 Mc. A new Item 3a has been added to both forms to provide a convenient means of showing eligibility for limited ship station license as required by Commission rule.

Consideration of the relatively small number of vessels for which FCC Form 501-B, Application for Ship Radar Station License, would continue to be used has resulted in the deletion of that form.

In response to its notice of proposed rule making, written comments were submitted by the following persons:

Radiomarine Corporation of America, hereinafter identified as "Radiomarine."
National Federation of American Shipping, Inc., hereinafter identified as the "Federation."

Both respondents submitted that it was not desirable to have a single license document covering all radio apparatus aboard ship. The Federation stated that it would have an adverse effect on the licensing of radio equipment aboard ocean vessels because it would create a confusing situation with respect to the inspection status of the voluntarily installed equipment. Radiomarine suggested optional continuance of the present practice of separate applications and licenses for equipment which is not located in the radio room of the vessel, while the Federation suggested that the proposed three-part FCC Form 501 be augmented by making the first license portion applicable only to radiotelegraph apparatus, and providing two additional portions applicable only to radiotelephone and radar apparatus, respectively.

Combination of the application, record copy and license forms into a single form was proposed solely to simplify ship licensing procedures and reduce administrative costs. Having in mind the problems of printing, stocking, distributing, processing and filing additional forms or portions of forms, the objections of both parties have, in the Commission's judgement, been satisfied by providing check boxes for identification of the class of station on the license portion of the revised Form 501, and including an instruction on the back of the form to the effect that additional license portions may be attached to the application and record copy if the applicant desires separate licenses for separate apparatus.

In addition, Radiomarine suggested certain changes in the format of the revised form, based on its past experience in completing ship application forms. The rearrangements suggested, have, in general, been incorporated into the final design. Finally the suggestion that communications service companies be

[1] The license portion of the combined form has been imprinted with only those frequencies that are subject to no change within the foreseeable future. Many other frequencies which are or will become the object of rule-making procedures under the implementation program of the Extraordinary Administrative Radio Conference, Geneva, 1951, cannot be included at this time in the license portion of the revised form. (See Docket No. 10209.) Supplementary authorization for the continued use of frequencies which are to be replaced or deleted will be included in an attachment to each license granted, such authorization to be effective only until use of replacement frequencies has been ordered by the Commission. This attachment will change from time to time as new frequency changes are implemented.

permitted to rely on standard equipment control agreements filed with the Commission for incorporation by reference into all applications in lieu of separate showings of control to accompany each application, was adopted, and appears in the instructions.

Other minor changes, editorial in nature, have been made; for example, in order to aid small boat owners, and applicants in Alaska, special instructions for their particular use have been included. Other instructions have been extended for the sake of clarity. Certain items, including the former question regarding the schedule of charges, are no longer considered useful and have been deleted.

Section 8.329 has been amended to delete the requirement that FCC Form 500 be carried aboard ship, to conform with the deletion of that form.

Part III has been added to the revised form to provide a convenient means of entering technical information regarding transmitters where such information is not already on file with the Commission.

Certain frequencies which are represented by the frequency symbols for which provision has been made in FCC Form 501 have already been made available for use, and others will be made available in the near future, as a result of implementation of the Geneva Agreement. Present application and license forms make no provision, and include no instructions, for the use of such frequency symbols. It is known that the filing of a substantial number of applications is being withheld pending adoption by the Commission of this new form. The orderly processing of applications demands, therefore, that the new application form and associated rule amendments be made available to applicants at the earliest possible moment.

Adoption of the abbreviated radiotelephone form (Form 501–A, short form) is solely for administrative convenience, and imposes no new requirement or restriction beyond the scope of issue raised in the original docket proceeding. Accordingly, further notice of proposed rule making under section 4 (a) of the Administrative Procedure Act is impracticable, unnecessary, and would fail to serve the public interest.

In view of the foregoing considerations, and pursuant to the authority contained in sections 4 (i) 301, 303 and 308 of the Communications Act of 1934, as amended; *It is ordered,* This 26th day of August 1953, that:

(1) The foregoing report is adopted.

(2) FCC Form 501[2] and FCC Form 501–A are adopted, effective immediately: *Provided, however* That application forms replaced by this order will be accepted by the Commission until October 31, 1953.

(3) Part 1, Practice and Procedure and Part 8, Stations on Shipboard in the Maritime Services, are amended as set forth below, effective immediately.

[2] Filed as part of the original document.

(4) The proceedings in Docket 10329 are hereby ended.

Released: August 27, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WM. P. MASSING,
Acting Secretary.

1. Amend Part 1 of the Commission's rules as follows:

In the table showing forms currently in effect and where they are referred to in Part 1 of the rules and regulations:

a. Delete the following forms which are superseded by the revised Form 501.

500	1.318 (b) (6)
	1.319 (b) (11)
501–B	1.318 (b) (9)
	1.319 (b) (10)
503	1.319 (b) (11)

b. For the following forms change reference to section numbers as indicated below:

501	1.318 (b) (6)
	1.319 (b) (9)
501–A	1.318 (b) (7)
	1.319 (b) (10)

2. In § 1.318 delete paragraph (b) and substitute the following:

(b) The following application forms should be used:

(1) FCC Form 302, "Application for broadcast station license"—to be used for all applications for license to use the former main transmitter as the auxiliary transmitter when no new construction is involved, and for regular authorization covering special experimental authorization.

(2) FCC Form 341, "Application for Noncommercial Educational FM Broadcast Station License." To be used for all applications for license to use the former main transmitter as the auxiliary transmitter when no new construction is involved.

(3) FCC Form 404, "Application for Aircraft Radio Station License."

(4) FCC Form 404–A, "Application for Private Aircraft Radio Station License."

(5) FCC Form 481, "Application for Authority to Operate a Station in the Radio Amateur Civil Emergency Service."

(6) FCC Form 501, "Application for Ship Radio Station Licenses."

(7) FCC Form 501–A, "Application for Ship Radiotelephone Station License."

(8) FCC Form 505, "Application for Citizens Radio Station Construction Permit and License."

(9) FCC Form 525, "Application for Disaster Communications Radio Station Construction Permit and License."

(10) FCC Form 602, "Application for Amateur Station License (under special provisions of Section 12.61 of the Commission's Rules)"—to be used for a station of amateurs in the armed forces when located in approved public quarters but not operated by the United States Government.

(11) FCC Form 610, "Application for Amateur Radio Operator and/or Station License."

3. In § 1.319 delete paragraph (b) and substitute the following:

(b) The following application forms should be used:

(1) FCC Form 301, "Application for Authority to Construct a New Broadcast Station or Make Changes in an Existing Broadcast Station." To be used for all applications for modification of any term of an existing authorization of a broadcast station (except in the International, Facsimile, Experimental, or Auxiliary Broadcast Services)

(2) FCC Form 312, "Application for Modification of International, Facsimile, or Experimental Broadcast Station License."

(3) FCC Form 313, "Application for Authorization in the Auxuliary Radio Broadcast Services."

(4) FCC Form 340, "Application for Authority to Construct or make Changes in a Noncommercial Educational FM Broadcast Station." To be used for all applications for modification of any term of an existing authorization for a noncommercial educational FM broadcast station.

(5) FCC Form 400, "Application for Radio Station Authorization in the Public Safety, Industrial, and Land Transportation Radio Services." Check Item 16 to indicate application is for Modification.

(6) FCC Form 400–A, "Request for Amendment of Radio Station Authorization.

(7) FCC Form 403, "Application for Radio Station License or Modification Thereof (other than broadcasting, amateur, ship, or aircraft)."

(8) FCC Form 404–A, "Application for Private Aircraft Radio Station License."

(9) FCC Form 501, "Application for Ship Radio Station Licenses."

(10) FCC Form 501–A, "Application for Ship Radiotelephone Station License."

(11) FCC Form 505, "Application for Citizens Radio Station Construction Permit and License."

(12) FCC Form 525, "Application for Disaster Communications Radio Station Construction Permit and License."

(13) FCC Form 602, "Application for Amateur Station License (under special provisions of Section 12.61 of the Commission's Rules)"—To be used for a station of amateurs in the armed forces when located in approved public quarters but not operated by the United States Government.

(14) FCC Form 610, "Application for Amateur Radio Operator and/or Station License."

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interpret or apply secs. 301, 303, 308, 48 Stat. 1081, 1082, 1085; 47 U. S. C. 301, 303, 308)

4. Amend Part 8 of the rules as follows:

a. Delete the present title and text of § 8.36 and substitute the following:

§ 8.36 *Application forms for station authorizations.* (a) The forms hereinafter designated in this section shall be used for filing formal applications for station authorizations:

(1) For new or modified license for all radio transmitting apparatus on board ship:

FCC Form 501.

except that an optional form may be used as follows where no separate FCC Form 501 is filed for other apparatus by the same applicant:

For radiotelephone license to use frequencies solely in the bands 1600–3500 kc, 30–40 Mc and 152–162 Mc: FCC Form 501 or FCC Form 501–A (short form).

(2) For renewal (without modification) of any license for radio station aboard ship:

FCC Form 405–A.

b. In § 8.102 delete present paragraph (a) and substitute the following:

§ 8.102 *Posting of station license.* (a) Except for certain stations to which paragraphs (b) or (c) of this section are applicable, the original license for each station on board ship subject to this part shall be conspicuously posted at the principal location on board at which each such station is operated: *Provided,* That when a ship is fitted with two or more stations authorized by a single license document:

(1) The original license shall be conspicuously posted at the principal operating location of the compulsorily-provided station;

(2) If no station is compulsorily-provided, the original license shall be conspicuously posted at the principal operating location of any station authorized for telephony.

c. In § 8.329 (a) (1) delete the words "and FCC Form 500"

d. In § 8.510 (b) delete the last sentence and substitute the following: "Each report shall specify the type of the alarm, the name of the vessel, the call letters and name of the licensee of the ship radio station and the name of the owner and operating company of the vessel."

e. In footnote 16 to § 8.510 (b) change number of FCC form to read "501"

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interpret or apply secs. 301, 303, 308, 48 Stat. 1081, 1082, 1085; 47 U. S. C. 301, 303, 308)

[F. R. Doc. 53–7670; Filed, Sept. 1, 1953; 8:50 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 10—UNIFORM SYSTEM OF ACCOUNTS FOR RAILROAD COMPANIES

MISCELLANEOUS AMENDMENTS

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 24th day of August A. D. 1953.

The matter of modifying the "Uniform System of Accounts for Railroad Companies," being under consideration pursuant to the provisions of section 20 of the Interstate Commerce Act, as amended (24 Stat. 386, 41 Stat. 493, 54 Stat. 916, 49 U. S. C. 20) and,

It appearing, that a notice dated April 14, 1953, was served on all railroad companies subject to provisions of the act, to the effect that certain modifications had been approved, such notice also being published in the FEDERAL REGISTER on April 19, 1953 (18 F R. 2418) pursuant to provisions of section 4 of the Administrative Procedure Act; and, after consideration of all written views or arguments received on or before July 1, 1953, as provided in such notice: It is ordered, that:

(1) *Effective date.* The modifications which are set forth below and made a part hereof, relating to the subject matter of said notice, shall become effective October 1, 1953.

(2) *Notice.* A copy of this order including the modifications set forth below shall be served on each carrier by railroad subject to Part I of the Act and not independently operated as an electric line, and on every trustee, receiver, executor, administrator, or assignee of any such carrier, and notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

By the Commission, Division 1.

[SEAL] GEORGE W LAIRD, *Acting Secretary.*

1. In § 10.04–25 *Deferred maintenance, and major repairs to equipment* cancel the title and text of this instruction.

2. In § 10.268 *Deferred maintenance; way and structures* cancel the title and text of this account.

3. In § 10.339 *Deferred maintenance; equipment* cancel the title and text of this account and the note thereto.

4. In § 10.340 *Major repairs; equipment* cancel the title and text of this account.

5. In § 10.480 *Accounts for small carriers, Class II* delete accounts 1208 and 268, "Deferred maintenance—Way and structures," 1232 and 340, "Major repairs—Equipment," and 1235 and 339, "Deferred maintenance—Equipment."

6. In § 10.490 *Accounts for small carriers, Class III* delete accounts 2207 and 268, "Deferred maintenance—Way and structures," 2230 and 340, "Major repairs—Equipment," and 2233 and 339, "Deferred maintenance—Equipment."

7. In § 10.704½ *Maintenance funds* cancel the title and text of this account. (See note below.)

8. In § 10.774 *Maintenance reserves* cancel the title and text of this account and the note thereto. (See note below.)

9. In § 10.790 *Form of general balance-sheet statement* delete accounts 704½, "Maintenance funds," and 774, "Maintenance reserves."

NOTE: It is the intent of this order than any balances in accounts 704½ or 774 at the effective date hereof, shall be transferred to account 704, "Capital and other reserve funds," or account 778, "Other unadjusted credits," as appropriate, until cleared in accordance with the special authority under which the reserve was created.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12)

[F. R. Doc. 53–7661; Filed, Sept. 1, 1953; 8:48 a. m.]

PART 14—ELECTRIC RAILWAYS: UNIFORM SYSTEM OF ACCOUNTS

MISCELLANEOUS AMENDMENTS

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 24th day of August A. D. 1953.

The matter of modifying the "Uniform System of Accounts for Electric Railways, Issue of 1947," being under consideration pursuant to the provisions of section 20 of the Interstate Commerce Act, as amended (54 Stat. 917, 49 U. S. C. 20 (3)) and,

It appearing, that a notice dated April 14, 1953, was served on all carriers by railroad independently operated as electric lines subject to provisions of the act, to the effect that certain modifications had been approved, such notice also being published in the FEDERAL REGISTER on April 19, 1953 (18 F R. 2418), pursuant to provisions of section 4 of the Administrative Procedure Act; and, no written views or arguments having been received on or before July 1, 1953, as provided in such notice: It is ordered, that:

(1) *Effective date.* The modifications which are set forth below and made a part hereof, relating to the subject matter of said notice, shall become effective October 1, 1953.

(2) *Notice.* A copy of this order including the modifications set forth below shall be served on each carrier by railroad independently operated as an electric line subject to the Act, and on every trustee, receiver, executor, administrator, or assignee of any such carrier, and notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

By the Commission, Division 1.

[SEAL] GEORGE W LAIRD, *Acting Secretary.*

1. In § 14.01–16 *Deferred maintenance and major repairs to equipment* cancel the title and text of this instruction.

2. In § 14.28–1 *Deferred maintenance; way and structures* cancel the title and text of this account.

3. In § 14.44–1 *Deferred maintenance; equipment* cancel the title and text of this account and the note thereto.

4. In § 14.44–2 *Major repairs; equipment* cancel the title and text of this account.

5. In § 14.51–1 *Deferred maintenance; power* cancel the title and text of this account.

6. In § 14.0–7 *Accounts for small carriers, Class II* delete accounts 28–1, "Deferred maintenance—Way and structures," 44–1, "Deferred maintenance—Equipment," 44–2, "Major repairs—Equipment," and 51–, "Deferred maintenance—Power."

7. In § 14.0–8 *Accounts for small carriers, Class III* delete accounts 28–1, "Deferred maintenance—Way and structures," 44–1, "Deferred maintenance—Equipment," 44–2, "Major repairs—Equipment," and 51–1, "Deferred maintenance—Power."

8. In § 14.05–7 *Form of general balance sheet statements* delete accounts 403–1, "Maintenance funds," and 442–1, "Maintenance reserves."

9. In § 14.403–1 *Maintenance funds* cancel the title and text of this account.

10. In § 14.442–1 *Maintenance reserves* cancel the title and text of this account and the note thereto.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12)

[F. R. Doc. 53–7659; Filed, Sept. 1, 1953; 8:47 a. m.]

PART 24—UNIFORM SYSTEM OF ACCOUNTS FOR PERSONS FURNISHING CARS OR PROTECTIVE SERVICES AGAINST HEAT OR COLD

MISCELLANEOUS AMENDMENTS

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 24th day of August A. D. 1953.

The matter of modifying the "Uniform System of Accounts for Persons Furnishing Cars or Protective Services Against Heat or Cold," being under consideration pursuant to the provisions of section 20 (6) of the Interstate Commerce Act, as amended (54 Stat. 917, 49 U. S. C. 20 (6)) and,

It appearing, that a notice dated April 14, 1953, was served on all persons furnishing cars or protective service against heat or cold subject to provisions of the act, to the effect that certain modifications had been approved, such notice also being published in the FEDERAL REGISTER on April 19, 1953 (18 F. R. 2419) pursuant to provisions of section 4 of the Administrative Procedure Act; and, no written views or arguments having been received on or before July 1, 1953, as provided in such notice; it is ordered, that:

(1) *Effective date.* The modifications which are set forth below and made a part hereof, relating to the subject matter of said notice, shall become effective October 1, 1953.

(2) *Notice.* A copy of this order including the modifications set forth below shall be served on all persons of record who are subject to such regulations and notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission in Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

By the Commission, Division 1.

[SEAL] GEORGE W. LAIRD, *Acting Secretary.*

1. In § 24.01–47 *Deferred maintenance and major repairs to rolling stock:* cancel the title and text of this instruction.

2. In § 24.332 *Deferred maintenance; car service facilities* cancel the title and text of this account and note thereto.

3. In § 24.333 *Major repairs; rolling stock:* cancel the title and text of this account.

4. In § 24.382 *Deferred maintenance; icing facilities* cancel the title and text of this account.

5. In § 24.432 *Deferred maintenance; refrigeration service facilities* cancel the title and text of this account.

6. In § 24.482 *Deferred maintenance; heater service facilities* cancel the title and text of this account.

7. In § 24.813 *Maintenance funds* cancel the title and text of this account.

8. In § 24.877 *Maintenance reserves* cancel the title and text of this account and the note thereto.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12)

[F. R. Doc. 53–7660; Filed, Sept. 1, 1953; 8:47 a. m.]

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service, Department of the Interior

PART 17—LIST OF AREAS

FEDERAL AID AREAS

EDITORIAL NOTE: For order affecting the tabulation in § 17.7, see Public Land Order 914 in the Appendix to Title 43, Chapter I, *supra,* reserving certain public lands in Wyoming in connection with the Sheridan County Elk Winter Pasture.

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Bureau of Animal Industry

[9 CFR Part 76]

SWINE AND CERTAIN SWINE PRODUCTS

PROPOSED AMENDMENT OF REGULATIONS RESTRICTING INTERSTATE MOVEMENT BECAUSE OF VESICULAR EXANTHEMA

Notice is hereby given pursuant to section 4 of the Administrative Procedure Act (5 U. S. C. 1003) that the Department of Agriculture is considering the amendment of the regulations restricting the interstate movement of swine and certain swine products because of vesicular exanthema (9 CFR Supp. Part 76, Subpart B; 18 F. R. 3636, 3829, as amended) under sections 1 and 2 of the act of February 2, 1903, as amended (21 U. S. C. 111, 120) and section 3 of the act of March 3, 1905, as amended (21 U. S. C. 125) as follows:

1. Section 76.35 (b) would be amended by deleting therefrom the phrase "and immediately after each such use," and by changing to a period the comma now preceding such phrase.

This amendment would eliminate certain requirements for cleaning and disinfecting vehicles after their use in connection with the interstate movement of swine from stockyards and other concentration points. Certain other requirements for cleaning and disinfecting vehicles prior to their use in the interstate movement of swine from stockyards and other concentration points would remain in effect.

2. Section 76.35 (d) would be amended to read:

(d) The Chief of Bureau may require the thorough cleaning and disinfecting as prescribed in paragraph (g) of this section of any vehicle or facility which has been used, or which he has reason to believe may have been used, in connection with the interstate movement of any swine or swine products affected with or exposed to vesicular exanthema, or of any swine fed any raw garbage or swine products other than specially processed swine products derived from such swine.

This amendment would add specific authority for the Chief of the Bureau of Animal Industry to require cleaning and disinfecting of any vehicles and facilities used, or believed to have been used, in the interstate movement of raw garbage fed swine or swine products thereof, which have not been specially processed.

Any interested person who wishes to do so may submit written comments, views, or arguments concerning the proposed amendments by filing them with the Chief of the Bureau of Animal Industry, United States Department of Agriculture, Washington 25, D. C. not later than September 17, 1953.

Done at Washington, D. C., this 28th day of August 1953.

[SEAL] TRUE D. MORSE, *Acting Secretary of Agriculture.*

[F. R. Doc. 53–7630; Filed, Sept. 1, 1953; 8:52 a. m.]

Production and Marketing Administration

[7 CFR Part 51]

CUCUMBERS

U. S. STANDARDS FOR GRADES

Notice is hereby given that the United States Department of Agriculture is considering the issuance of revised United States Standards for Cucumbers under the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.) and the Department of Agriculture Appropriation Act, 1954 (Pub. Law 156, 83d Cong., approved July 28, 1953) to supersede United States Standards for Slicing Cucumbers effective February 15, 1941.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with E. E. Conklin, Chief, Fresh Products Standardization and Inspection Division,

Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, South Building, Washington 25, D. C., not later than 5:30 p. m., e. s. t., on the thirtieth (30) day after the date of publication of this notice in the FEDERAL REGISTER.

The proposed standards are as follows:

§ 51.206 *Standards for cucumbers*—(a) *Grades*—(1) *U. S. Fancy.* U. S. Fancy consists of cucumbers which are well colored, well formed, not overgrown and which are fresh, firm, and free from decay, sunscald and from injury caused by scars and from damage caused by yellowing, sunburn, dirt or other foreign material, freezing, mosaic or other disease, insects, mechanical or other means. (See Tolerances)

(i) The maximum diameter of each cucumber shall be not more than 2⅜ inches and the length of each cucumber shall be not less than six inches. (See Tolerances)

(2) *U. S. No. 1.* U. S. No. 1 consists of cucumbers which are fairly well colored, fairly well formed, not overgrown and which are fresh, firm, and free from decay, sunscald and from damage caused by scars, yellowing, sunburn, dirt or other foreign material, freezing, mosiac or other disease, insects, mechanical or other means. (See Tolerances)

(i) Unless otherwise specified, the maximum diameter of each cucumber shall be not more than 2⅜ inches and the length of each cucumber shall be not less than 6 inches. (See Tolerances.)

(3) *U. S. No. 1 Small.* U. S. No. 1 Small consists of cucumbers which meet all requirements for the U. S. No. 1 grade except for size. The diameter of each cucumber shall be not less than 1½ inches or larger than 2 inches. There are no requirements for length. (See Tolerances.)

(4) *U. S. No. 1 Large.* U. S. No. 1 Large consists of cucumbers which meet all requirements for the U. S. No. 1 grade except for size. The minimum diameter of each cucumber shall be not less than 2¼ inches and unless otherwise specified, the length of each cucumber shall be not less than 6 inches. There are no requirements for maximum diameter or maximum length. (See Tolerances.)

(5) *U. S. No. 2.* U. S. No. 2 consists of cucumbers which are moderately colored, not badly deformed, not overgrown and which are fresh, firm, free from decay and free from damage caused by freezing, sunscald and from serious damage caused by scarring, yellowing, sunburn, dirt or other foreign material, mosaic or other disease, insects, mechanical or other means. (See Tolerances)

(i) Unless otherwise specified, the maximum diameter of each cucumber shall be not more than 2⅜ inches and the length of each cucumber shall be not less than 5 inches. (See Tolerances)

(6) *Unclassified.* Unclassified consists of cucumbers which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

(b) *Tolerances.* (1) In order to allow for variations incident to proper grading and handling, the following tolerances shall be permitted:

(i) *For defects.* 10 percent, by count, in any lot, for cucumbers which fail to meet the requirements of the grade, including therein not more than 1 percent for decay and,

(ii) *For off-size.* 10 percent, by count, in any lot, for cucumbers which fail to meet the length and diameter requirements, including therein not more than one-half thereof, or 5 percent, for cucumbers which fail to meet the requirements for minimum diameter, and not more than one-half thereof, or 5 percent, for cucumbers which fail to meet the requirements for maximum diameter.

(c) *Application of tolerances.* (1) The contents of individual packages in the lot based on sample inspection, are subject to the following limitations: *Provided,* That the averages for the entire lot are within the tolerances specified for the grade:

(i) For a tolerance of 10 percent or more, individual packages in any lot may contain not more than one and one-half times the tolerance specified, except that when the package contains 15 specimens or less, individual packages may contain not more than double the tolerance specified; and,

(ii) For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified, except that at least one defective and one off-sized specimen may be permitted in any package.

(d) *Definitions.* (1) "Well colored" means that not less than three-fourths of the surface of the cucumber is of a medium green or darker color, and that at least a light green color extends to the blossom end on one side of the cucumber.

(2) "Well formed" means that the cucumber is practically straight and not more than very slightly constricted or more than moderately tapered or pointed.

(3) "Overgrown" means that the cucumber has developed beyond the best stage for slicing. It usually yields to slight pressure of the thumb. The seeds are tough and fibrous, and the pulp in the seed cavity is usually watery or jellylike. In more advanced cases, pithy streaks may be found in the flesh of the cucumber.

(4) "Injury caused by scars" means scars which aggregate more than the area of a circle ⅜ inch in diameter on a cucumber 6 inches in length. Larger cucumbers may have greater areas, provided that such scars do not affect the appearance of the cucumber to a greater extent than that caused by scars which are permitted on a 6 inch cucumber.

(5) "Damage" means any defect which materially affects the appearance, or the edible or shipping quality of the cucumbers. The following defect, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(i) Scars when aggregating more than the area of a circle ⅝ inch in diameter on a cucumber 6 inches in length. Smaller cucumbers shall have lesser areas of scars and larger cucumbers may have greater areas, provided that such scars do not affect the appearance of the cucumbers to a greater extent than that caused by scars which are permitted on a 6 inch cucumber.

(6) "Diameter" means the greatest dimension of the cucumber measured at right angles to the longitudinal axis exclusive of "warts"

(7) "Fairly well colored" means that not less than two-thirds of the surface of the cucumber is of a medium green or darker color, and that at least a light green color extends to within one-half inch of the blossom end. White color shall be permitted over the blossom end of the cucumber.

(8) "Fairly well formed" means that the cucumber may be moderately curved but not deeply constricted, not extremely tapered or pointed and not otherwise misshapen.

(9) "Moderately colored" means that at least one-half of the surface of the cucumber is of a light green or darker color.

(10) "Badly deformed" means that the cucumber is so badly curved, constricted, tapered or otherwise so badly misshapen that the appearance is seriously affected.

(11) "Serious damage" means any defect which seriously affects the appearance, or the edible or shipping quality of the cucumbers.

Done at Washington, D. C., this 28th day of August 1953.

[SEAL] ROY W LENNARTSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 53-7682; Filed, Sept. 1, 1953; 8:52 a. m.

[7 CFR Parts 816, 818, 819]

SUGAR REQUIREMENTS AND QUOTAS

ENTRY OR USE OF SUGAR WITHOUT CHARGE TO QUOTAS

Notice is hereby given that the Secretary of Agriculture, pursuant to authority vested in him by the Sugar Act of 1948, as amended (61 Stat. 922 as amended by 65 Stat. 318; 7 U. S. C. Sup. 1100) is considering the revision as hereinafter proposed of Sugar Regulations 816, 818 and 819.

The purposes of these revisions are (1) To revise the requirements relating to the entry and marketing of sugar without charge to quota, and (2) to clarify and restate in one regulation (Sugar Regulation 816) all of the requirements relating to the entry and marketing of sugar or liquid sugar without charge to quota.

A notice of proposed rule making pertaining to these same regulations was published in the FEDERAL REGISTER of May 28, 1953, at page 3069. Persons who were interested in submitting their views were invited to file them with the Director, Sugar Branch, Production and Marketing Administration. Those filed, when coupled with additional changes

made in the proposed rule, prompt the issuance of a completely revised notice.

All of the statement of explanation accompanying the notice of proposed rule making published on May 23, 1953, is made a part hereof.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed regulation shall file the same in quadruplicate with the Director of the Sugar Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C., not later than 20 days after the publication of this notice in the FEDERAL REGISTER.

The revised proposed Sugar Regulation 816 is as follows:

PART 816—ENTRY AND MARKETING OF SUGAR OR LIQUID SUGAR WITHOUT CHARGE TO QUOTA

Sec.
816.1 Definitions.
816.2 General requirement.
816.3 Authorized purposes.
816.4 Provisions of bond.
816.5 Fulfillment of conditions of bond.
816.6 Termination of obligation under bond.
816.7 Default of bond.
816.8 Credits to quotas.
816.9 Records and reports.
816.10 Delegation of authority.

AUTHORITY: §§ 816.1 to 816.10 issued under section 403, 61 Stat. 932; 7 U. S. C. Sup. 1153.

§ 816.1 *Definitions.* (a) The term "act" means the Sugar Act of 1948, as amended (61 Stat. 922 as amended by 65 Stat. 318; 7 U. S. C. Sup. 1100)

(b) The term "person" means any individual, partnership, corporation, or association.

(c) The term "Department" means the United States Department of Agriculture.

(d) The term "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated the authority to act in his stead.

(e) The term "domestic area" means the domestic beet sugar area, the mainland cane sugar area, Hawaii, Puerto Rico or the Virgin Islands.

(f) The term "quota" means any quota (or the direct-consumption portion of any quota) or proration thereof established by the Secretary pursuant to the act and any allotment of any such quota pursuant to section 205 (a) of the act.

(g) The terms "sugar" and "liquid sugar" mean "sugar" and "liquid sugar" as defined in section 101 of the act.

(h) The term "processor" means any person engaged in the manufacture of sugar or liquid sugar from sugar beets or sugarcane grown in a domestic area and the term shall also include a producer of sugarcane who received sugar in payment for sugarcane.

(i) The term "refiner" means any person who engages in the processing (refining) of sugar or liquid sugar to further improve the quality of such sugar or liquid sugar.

§ 816.2 *General requirement.* Sugar or liquid sugar may be brought or imported into the continental United States, or marketed in any domestic area without being charged to the applicable quota in accordance with the provisions of this part. The requirements of Part 817 of this chapter relating to the entry of sugar or liquid sugar into the continental United States, and Part 815 of this chapter relating to the marketing of sugar, where applicable, also apply to entries and marketings, respectively, under this part.

§ 816.3 *Authorized purposes*—(a) *Refining and exportation; use in articles for export.* Upon acceptance by the Secretary of a bond furnished pursuant to § 816.4, sugar or liquid sugar may be brought or imported into the continental United States without being charged to the applicable quota (1) to be refined and exported as sugar or liquid sugar within six months of the date of entry, or (2) to be used in the manufacture of articles exported within five years of the date of entry of the sugar or liquid sugar.

(b) *Use for distillation of alcohol or for livestock feed.* Upon acceptance by the Secretary of a bond furnished pursuant to § 816.4, sugar or liquid sugar may be brought or imported into the continental United States, or marketed in any domestic area, without being charged to the applicable quota, for the distillation of alcohol or for the production of livestock feed within two months from the date of entry or date of marketing by the processor of such sugar or to be fed to livestock within six months of such entry or marketing.

(c) *Refining pending availability of quota*—(1) *Refining within the producing area.* Upon acceptance by the Secretary of a bond furnished pursuant to § 816.4, sugar or liquid sugar produced from sugarcane grown in the mainland cane sugar area may be sold and delivered to a refiner in the continental United States and that produced in Hawaii or Puerto Rico may be sold and delivered to a refiner within the same producing area, without being charged against the applicable quota, for refining and segregation until marketing within an applicable quota is authorized by the Secretary.

(2) *Refining and placing in Customs' custody.* Whenever the Secretary determines and gives public notice thereof that such action will not interfere with the effective administration of the act, and upon the acceptance by the Secretary of a bond furnished pursuant to § 816.4, sugar or liquid sugar may be brought in or imported into the continental United States for the purpose of being refined and placed in Customs' custody within one month of the date of entry without being charged to the applicable quota.

§ 816.4 *Provisions of bond*—(a) *Principal and surety.* The importer, consignee, owner, processor, refiner, or other person interested in the sugar or liquid sugar covered by this part shall furnish a bond on Form SU-17 or SU-17A, as appropriate, with a surety or sureties listed by the Secretary of the Treasury as acceptable on Federal bonds.

(b) *Amount.* The amount of any bond furnished under this part shall be equal to the value of the sugar or liquid sugar covered by such bond. The value shall be the daily "spot" price per pound of raw sugar for consumption in the continental United States determined by the New York Coffee and Sugar Exchange on the last business day before the date of execution of the bond multiplied by the weight of sugar in pounds, raw value, as defined in section 101 (h) of the act. The value of liquid sugar shall be the same price per pound multiplied by the pounds of the "total sugar content."

(c) *Conditions to be fulfilled.* Any bond furnished pursuant to this part shall provide for:

(1) The use of a specified quantity of sugar or liquid sugar for a purpose authorized in § 816.3 within the time limits prescribed therein;

(2) Payment to the United States of America of expenses incurred by either the United States Custom Bureau or the Department as a result of supervision and control of the sugar or liquid sugar until the obligation under the bond has been terminated by the Secretary;

(3) Payment to the United States of America of the amount of the bond upon default, in whole or in part, of any other condition of the bond.

§ 816.5 *Fulfillment of conditions of bond*—(a) *Substitution of bond.* The obligation of the principal and surety under any bond furnished pursuant to this part shall terminate upon acceptance by the Secretary of a substitute bond obligating the principal to use the sugar or liquid sugar for a purpose covered by the same paragraph of § 816.3 as the bond for which the substitute bond is accepted.

(b) *Disposition of sugar or liquid sugar* The condition that the sugar or liquid sugar be used for the purpose for which it was entered shall be deemed to have been fulfilled upon compliance with each of the following provisions which are shown by the terms of the bond to be applicable:

(1) *Refining and exportation*—(i) *Sugar or liquid sugar on which drawback is payable.* Exportation of sugar or liquid sugar, within six months of the date of entry of the sugar or liquid sugar into the continental United States, the allowance of drawback, and the report thereof on Form _____.

(ii) *Sugar or liquid sugar on which drawback is not payable.* Shipment of sugar or liquid sugar to territories or possessions of the United States other than Hawaii and Puerto Rico, for consumption therein, within six months of the date it was brought into the continental United States and the report thereof on Form _____.

(2) *Use in articles for export*—(i) *Sugar or liquid sugar on which drawback is payable.* Exportation of articles containing sugar or liquid sugar within five years of the date of entry of the sugar or liquid sugar into the continental United States, the allowance of drawback, and the report thereof on Form _____.

(ii) *Sugar or liquid sugar on which drawback may not be claimed.* Shipment to territories and possessions of the United States, other than Hawaii and Puerto Rico, for consumption therein,

of articles containing sugar or liquid sugar within five years of the date on which the sugar or liquid sugar was brought into the continental United States and the report thereof on Form _____.

(3) *Use for distillation of alcohol.* Use of sugar or liquid sugar, after the date of the acceptance of bond and within two months of the date it was entered or brought into the continental United States or the date marketed in any domestic area, exclusively for the distillation of alcohol and the certification thereof on Form _____.

(4) *Use for the manufacture of livestock feed.* Use of sugar or liquid sugar, after the date of the acceptance of bond and within two months of the date it was entered or brought into the continental United States or the date marketed in any domestic area, exclusively for the manufacture of livestock feed and the certification thereof on Form___.

(5) *Use for livestock feed.* Use of sugar or liquid sugar after the date of acceptance of bond and within six months of the date it was entered or brought into the continental United States or the date marketed in any domestic area, exclusively for feeding to livestock, and the certification thereof on Form _____.

(6) *Refining in producing area pending availability of quota.* Segregation by the refiner of an equivalent quantity of sugar or liquid sugar within one month (or such shorter period as the secretary may specify) of the date the sugar or liquid sugar was marketed in any domestic area and the holding apart of the segregated sugar or liquid sugar from all other sugar or liquid sugar until the beginning of the next calendar year or until such earlier date as the Secretary may specify. The processor, in this case, shall not market sugar against any applicable allotment subsequently made available to him until the obligations under all bonds covering sugar delivered by such processor are terminated by the Secretary.

(7) *Refining and placing in Customs' custody.* Authorization to market within the applicable quota at any time or placing in Customs' custody an equivalent quantity of sugar or liquid sugar within one month of the date the sugar or liquid sugar was entered or brought into the continental United States under bond. If the sugar or liquid sugar is entered or brought in during December, the principal shall have in inventory on the 31st day of that month the quantity under bond.

(c) *Acceptance of other proof.* Nothing in this section shall preclude the acceptance of such other proof of the fulfillment of the conditions of a bond as the Secretary may deem appropriate.

§ 816.6 *Termination of obligation under bond.* The obligation of the principal and surety under any bond given pursuant to this part shall cease upon notice by the Secretary to the principal, in writing, that the conditions of the bond have been fulfilled.

§ 816.7 *Default of bond.* Upon default of any of the conditions of a bond furnished pursuant to this part the applicable quota shall be charged as of the end of the current quota year with the quantity of sugar or liquid sugar with respect to which such default occurred, and to the extent that such quota is exceeded, the principal shall be subject to the penalties provided for in section 405 of the act. Such penalties shall be in addition to any obligation for payments to the United States of America pursuant to the terms of the bond.

§ 816.8 *Credits to quotas*—(a) *Exportation.* The quantity of sugar or liquid sugar with respect to which the Collectors of Customs report to the Secretary that drawback of duty has been allowed shall be credited to the current quota of the country from which the designated sugar was imported except to the extent that the exportation was in compliance with a condition of a bond furnished pursuant to this part. Whenever a credit has been made to a quota with respect to a specific quantity of sugar or liquid sugar, such quantity may not be used for the purpose of fulfilling the conditions of a bond.

(b) *Use for distillation of alcohol or for livestock feed.* The quantity of sugar or liquid sugar charged to the quota for any producing area but used for the distillation of alcohol, for livestock feed, or for the production of livestock feed, may be credited to the designated quota for the year in which such use occurred upon acceptance within such year by the Secretary of such proof of the source and use of the sugar as he may require.

§ 816.9 *Records and reports.* Each person furnishing a bond pursuant to this part shall keep and preserve for a period of not less than two years from the date of termination of the obligation under each bond accurate records of his transactions concerning the sugar or liquid sugar covered by such bond. Each such person shall further be required to keep such records and submit such reports as may be necessary or appropriate in the administration of the provisions of this part, subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942. The Director of the Sugar Branch, Production and Marketing Administration of the Department, or any employee of the Department authorized to act in his stead, shall be entitled to inspect such records at such time and to such extent as may be necessary or appropriate, in his discretion, in the administration of the provisions of this part.

§ 816.10 *Delegation of authority.* The Director or Deputy Director of the Sugar Branch, or the Chief of the Quota and Allotment Division thereof, Production and Marketing Administration of the Department, is authorized to act for and on behalf of the Secretary in administering §§ 816.1 through 816.9.

Issued at Washington, D. C., this 27th day of August 1953.

[SEAL] HOWARD H. GORDON,
Administrator

[F. R. Doc. 53-7686; Filed, Sept. 1, 1953; 8:53 a. m.]

[7 CFR Part 913]

HANDLING OF MILK IN THE GREATER KANSAS CITY MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS THERETO WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED ORDER, AMENDING THE ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900) notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and a proposed order amending the order, as amended, regulating the handling of milk in the Greater Kansas City marketing area.

Interested parties may file written exceptions to this recommended decision with the Hearing Clerk, Room 1353, South Building, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 8th day after the publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the following findings and conclusions were formulated, was conducted at Kansas City, Missouri, on August 14–15, 1953 pursuant to notice thereof which was issued on August 6, 1953 (18 F R. 4708)

The material issues of record related to:

1. The price for Class I milk through March 1954, and
2. The definition of a pool plant.

Findings and conclusions. The following findings and conclusions are based on the evidence introduced at the hearing and the record thereof:

1. No change in the present provisions for determining the price for Class I milk should be made at this time.

The Greater Kansas City milkshed has experienced a severe drought this summer. Seventeen of the 36 Missouri counties of the milkshed are in the officially designated disaster drought area. Forty-five percent of the producers supplying the market are located in these counties. Sixteen of the seventeen Kansas counties of the milkshed, in which there are an additional 42 percent of the producers, have been recommended by state authorities for such designation. Rainfall for June, July and early August has averaged considerably less than 50 percent of normal. Precipitation was also abnormally low in earlier months of this year.

Pasture conditions as of August 1 are officially reported as 33 percent of normal in the crop reporting districts which include the 17 Missouri Counties mentioned above, 49 percent in the crop reporting districts which include the principal Kansas producing counties,

and in none of the remainder of the milkshed is the reported condition in excess of 60 percent of normal. Official estimates of the condition of lespedeza hay production expressed as a percentage of normal are 35–40 percent in the principal Missouri milk producing counties and 45–55 percent in the other Missouri counties of the milkshed. These are the only items for which official estimates localized to the area were available to the record. The official crop production estimates as of August 1 indicate generally reduced yields in Missouri and Kansas of corn, oats, and hay crops.

Testimony of producers is to the effect that failure of pastures has for some weeks required them to feed their cows, hay, green corn or ensilage crops upon which they were depending for their winter supply of feed. The lengthening of the feeding period at a time of short crops of home grown feeds will, according to this testimony, substantially increase the cost of producing milk until the 1954 pasture season.

A substantial drop in milk production occurred in late July and the first few days of August when excessive temperatures prevailed. There were some indications that milk production in mid-August was slightly higher than at the first of the month but it appears clear that the decline in production from July to August will be considerably greater than is normally expected. Prospective production conditions and available supplies of feeds indicate that greater than normal seasonal declines in production may also be expected in later months.

Producers proposed that for the months of September 1953 through March 1954 the differential added to basic formula prices to determine the prices for Class I milk under the order be increased from $1.45 to $1.90, and that for this period the provision of the order for adjusting the Class I price on the basis of the ratio of Class I sales to producer receipts be suspended.

The "supply-demand" adjustment is based upon the receipts and sales of milk during the two-month period immediately preceding the month for which the Class I price is to be determined. For each month of 1953 through July this provision has resulted in some downward adjustment of the Class I price. The adjustment for July was a 12 cent reduction in price. For the month of August, however, no adjustment in either direction resulted. Based upon the known record of receipts and sales for July and the testimony on the record with respect to receipts and sales for August, it appears certain that some upward adjustment of Class I prices for September will result from this provision. If the production pattern for this fall and winter season is affected to the extent that producers expect, substantial increases in the Class I price will result from the operation of the present provisions of the order.

Producers based their request for a temporary fixed increase of 45 cents per hundredweight in lieu of automatic supply-demand adjustment of the Class I price upon the need for prompt assurance of increased returns to encourage producers to maintain their producing herds under adverse conditions. This represents the maximum upward adjustment provided under the present provisions. They express the opinion that the operation of the present provision is too slow to provide proper pricing under the present emergency, but fail to show wherein the adjustments presently provided will not provide prices suitably adjusted to the supply conditions that they expect to prevail in the market.

The Kansas City order provides substantial increases in returns to producers for fall production over those for summer months. Beginning in August the Class I differential is increased from $1.15 to $1.45. For the months of April through July the producer blend price is reduced 40 cents per hundred pounds to accumulate a fund for fall production incentive payments. This reduction does not apply to the producer blend price for later months. The funds so accumulated are paid to producers on the basis of their deliveries of milk in October, November, and December. While these provisions are designed to improve the seasonal pattern of production under normal conditions, they nevertheless constitute considerable assurance of increased returns per hundredweight under present conditions.

A considerable portion of the Greater Kansas City milkshed is now included in designated drought disaster areas. Should conditions in the remaining portion of the milkshed warrant such action it is to be presumed they will be so designated under the procedures established for such designation. Dairymen in areas so designated are eligible to secure feed concentrates and grains from Commodity Credit Corporations stocks at reduced prices if they establish individual need. While this program is designated to provide the basis for maintaining foundation herds, and not necessarily to promote a high level of milk production, it nevertheless should provide a means whereby some of the most disastrous effects of drought conditions can be alleviated without dispersal of the foundation herds which constitute the future milk supply of the area. The program should also provide a means whereby a portion of the unusual costs dairymen incur under drought conditions may be avoided.

Milk production conditions are good in areas from which Kansas City has in supplies when needed, and the record the past imported supplemental milk indicates that suppliers in these areas are currently offering to supply Kansas City handlers with milk as needed.

It is concluded that the present provisions of the order provide a basis for adjusting the Class I price in line with current production and market conditions and that the proposed amendments should not be adopted at this time.

2. Provision should be made for including in the definition of "pool plant" any approved plant operated by a cooperative association if three-fourths or more of the milk of members of such association is delivered to the pool plants of other handlers.

The Kansas City order presently provides that in order to qualify as a pool plant a plant approved by the appropriate health authorities must distribute 15 percent of its receipts on routes in the marketing area or supply 30 percent of its receipts to other pool plants. Supply plants which qualify in each of six months of short production may be qualified for the following six months without current movements to pool plants.

The largest cooperative association in the market has operated no facilities of its own. Milk of its member producers is regularly delivered to the pool plants of handlers. During recent months it has diverted to non-pool plants milk of a number of members which handlers would not receive. In order that it may be better able to serve the market and its members the association proposes to establish an approved receiving plant. While it is probable that under present supply conditions in the market this plant would qualify as a pool plant under the 30 percent six months rule, it is possible that this might not occur while the association was supplying the needs of the market to the maximum extent. The association is principally engaged in supplying milk to the pool plants of other handlers direct from the farms of its members. As handlers require additional supplies it may be most economical for these demands to be filled by shifting producers from the association plant to other handlers' plants. The milk received at the association plant would then be only such milk as there is no current need for in handlers' plants.

The qualifications for pool plant status are a means of establishing the identity of plants with the fluid milk trade of the market. A requirement that three-fourths of the milk which a cooperative association represents be delivered to pool plants of other handlers provides a substantially greater identification than is now required with respect to the plants of other handlers. A proposal that provision be made for defining as a pool plant the approved plant of a cooperative association if 75 percent or more of the milk of members of such association is delivered to the pool plants of other handlers should be adopted.

General findings. (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The parity prices of milk produced for sale in the said marketing area as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply of and demand for such milk, and the minimum prices specified in the proposed marketing agreement and in the order, as amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(c) The proposed marketing agreement and the order, as amended and as hereby proposed to be further amended, will regulate the handling of milk in the

same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, the said marketing agreement upon which a hearing has been held.

Rulings on proposed findings and conclusions. Within the period reserved therefor, briefs were filed on behalf of interested parties. The briefs contained suggested findings of fact, conclusions, and arguments with respect to the proposals discussed at the hearing. Every point covered in the briefs was carefully considered along with evidence in the record in making findings and reaching the conclusions hereinbefore set forth. To the extent that the suggested findings and conclusions contained in the briefs are inconsistent with the findings and conclusions contained herein, the requests to make such findings or to reach such conclusions are denied on the basis of the facts found and stated in connection with the findings and conclusions in this decision.

Recommended marketing agreement and order The following order, amending the order, as amended, is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be identical with those contained in the order.

1. Delete § 913.10 and substitute therefor the following:

§ 913.10 *Pool plant.* "Pool plant" means an approved plant other than the plant of a producer-handler:

(a) During any delivery period within which an amount of milk equal to 15 percent or more of such plant's receipts of milk from dairy farmers who meet the specifications (other than delivery to a pool plant) of § 913.7 is disposed of from such plant as Class I milk on routes operated in the marketing area;

(b) During any delivery period of September, October, November, December, January, or February within which an amount of milk equal to 30 percent or more of such plant's receipts of milk from dairy farmers who meet the specications (other than delivery to a pool plant) of § 913.7 is transferred in bulk to a plant described in paragraph (a) of this section. Any such plant which is a pool plant in each of the delivery periods of September, October, November, December, January, and February shall be a pool plant for each of the following months of March, April, May, June, July, and August, regardless of the quantity of milk then disposed of to other pool plants, if a written request for pool plant status for such six months' period is recieved from the operator of such plant by the market administrator before March 1, or

(c) During any delivery period within which such plant is operated by a cooperative association, and 75 percent or more of the milk delivered during the delivery period by producers who are members of such association is received at the pool plants of other handlers.

If a handler operates more than one approved plant, the percentage requirements of this definition shall apply to the combined receipts and disposition of such multiple plant operation except that no plant which was not an approved plant during each of the preceding delivery periods of September through February shall be a pool plant as a part of such multiple plant operation during any of the delivery periods of March through August unless such multiple plant operation qualifies under paragraph (a) of this section for pool plant status for such delivery period.

Filed at Washington, D. C., this 27th day of August 1953.

[SEAL] ROY W LENNARTSON,
Assistant Administrator.

[F. R. Doc. 53-7684; Filed, Sept. 1, 1953; 8:53 a. m.]

[7 CFR Part 950]

PEACHES GROWN IN UTAH

NOTICE OF PROPOSED RULE MAKING WITH RESPECT TO EXPENSES AND FIXING OF RATE OF ASSESSMENT FOR 1953-54 FISCAL YEAR

Consideration is being given to the following proposals which were submitted by the Administrative Committee, established under the marketing agreement and Order No. 50 (7 CFR Part 950) regulating the handling of peaches grown in Utah, as the agency to administer the terms and provisions thereof:

(a) That the Secretary of Agriculture find that expenses not to exceed $2,250.00 are likely to be incurred by said committee during the fiscal year beginning May 1, 1953, and ending April 30, 1954, both dates inclusive, for its maintenance and functioning under the aforesaid marketing agreement and order; and

(b) That the Secretary of Agriculture fix, as the share of such expenses which each handler who first ships peaches shall pay in accordance with the provisions of the aforesaid marketing agreement and order during the aforesaid fiscal year, the rate of assessment at $0.025 per bushel basket of peaches, or an equivalent quantity of peaches in other containers or in bulk, shipped by such handler during said fiscal year.

All persons who desire to submit written data, views, or arguments for consideration in connection with the aforesaid proposals may do so by mailing the same to the Director, Fruit and Vegetable Branch, Production and Marketing Administration, Room 2077, South Building, Washington 25, D. C., not later than the 10th day after the publication of this notice in the FEDERAL REGISTER.

Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Issued this 28th day of August 1953.

[SEAL] FLOYD F. HEDLUND,
Acting Director
Fruit and Vegetable Branch.

[F. R. Doc. 53-7683; Filed, Sept. 1, 1953; 8:52 a. m.]

[7 CFR Part 993]

[Docket No. AO 201-A2]

HANDLING OF DRIED PRUNES PRODUCED IN CALIFORNIA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED FURTHER AMENDMENTS OF MARKETING AGREEMENT, AS AMENDED, AND ORDER, AS AMENDED

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to proposed further amendments of Marketing Agreement No. 110, as amended, and Order No. 93, as amended (7 CFR, 1952 Rev., Part 993), regulating the handling of dried prunes produced in California. That marketing agreement and order, as amended (hereinafter referred to as the "order"), are effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) (hereinafter referred to as the "act") and any amendments which may be adopted as a result of this proceeding also will be effective pursuant to said act. Interested parties may file written exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 1353, South Building, Washington 25, D. C., not later than the close of business on the twenty-first day after publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing, on the record of which the proposed further amendments of the order are formulated, was held at San Francisco, California, on April 14, 15, 16, and 17, 1953. The hearing was initiated pursuant to a notice thereof which was published in the FEDERAL REGISTER (18 F R. 1756) of March 28, 1953. The notice of hearing included proposed amendments received from the Prune Administrative Committee (hereinafter referred to as the "committee"), established pursuant to the order as the agency to administer the terms and provisions thereof; a proposed amendment received from certain independent producers of dried prunes (not members of a cooperative marketing association handling dried prunes), and a proposed amendment received from certain independent handlers of dried prunes. The notice also contained an amendment proposed by the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture.

Material issues. The material issues, presented on the record of the hearing, involving the proposals of the committee, were concerned with amending the order to provide for:

(1) A period of 60, instead of 20, calendar days after vacancies occur in the committee's membership for persons to be nominated for the vacant positions, and an optional method for nomi-

nating persons to file vacancies in the independent member and alternate member positions;

(2) A requirement that independent producer members and producer-at-large members of the committee and their alternates shall not engage in the handling of prunes;

(3) Different areas covered by three of the seven districts delineated in the order, from which independent producer nominees for seven member and seven alternate member positions on the committee are elected;

(4) Different voting requirements for the adoption by the committee of any proposition relating to marketing policy, grade and size regulations, salable and surplus tonnage regulations, diversion privileges, or surplus disposition to require the affirmative votes of at least 75 percent of the members present, provided that at least 11 members vote affirmatively on any such recommendation; deletion of the requirement that the committee file with the Secretary a verbatim record of those portions of its meetings relating to diversion privileges and disposition of surplus tonnage; and a limitation on the proposals on which the committee is required to report to the Secretary the individual votes cast;

(5) A later date by which the committee is required to submit to the Secretary its proposed budget of expenses and recommended rate of assessment;

(6) Different publicity requirements relative to marketing policy reports, and also relative to the committee's recommendations and the Secretary's regulations which relate to grade, size, or salable and surplus percentage actions;

(7) Size requirements in the order for surplus substandard prunes delivered to the committee, now included in the rules and procedures, and a reduction in the tolerance with respect to sizes of substandard prunes delivered to the committee on the equivalent quantity basis for substandard prunes received in appraisal lots;

(8) More effective provisions for the disposition of surplus tonnage prunes in export outlets, including: A permissive export plan, whereby handlers, in years of relatively heavy surpluses, could make sales of salable tonnage prunes in specified foreign countries whose requirements were excluded from the estimates upon which the salable percentage was based, at prices lower than domestic prices for prunes, with provision for release by the committee of an equivalent tonnage of surplus standard prunes to all handlers and compensating payments to the exporting handlers; appropriate modifications of and additions to the marketing policy and salable and surplus percentage provisions of the order needed to implement the permissive export plan; more flexible provisions for sales of surplus prunes to handlers to meet increased requirements for salable tonnage due to the unanticipated expansion of demand in foreign countries which were included in the estimates upon which the salable percentage was based; authority for the committee to release to individual handlers quantities of surplus standard prunes equivalent to the quantities of salable prunes sold by them for shipment to a foreign country which was estimated to have no probable market requirement for prunes; and notice to the Secretary by the committee prior to its disposing of surplus prunes and for his right of disapproval of such proposals;

(9) Clarity in the intent of provisions relating to sales by the committee of surplus standard prunes to handlers for use in any manufacturing outlet which was not included in the estimates upon which the salable percentage was based;

(10) Restrictions on the disposition of surplus substandard prunes containing defects of mold, imbedded dirt, insect infestation and decay in excess of prescribed tolerances;

(11) Authority for the committee to hypothecate executed contracts for the sales of surplus prunes to any person, subject to specified restrictions;

(12) Conformance of handler price reporting requirements with proposed amendments affecting such requirements;

(13) The use by the committee of unexpended funds collected as assessments during any crop year to pay its expenses during a portion of the succeeding crop year, and distribution of unexpended assessment funds upon termination of the order in such manner as the Secretary may direct;

(14) Lower tolerances for certain objectionable defects, and relaxation of the tolerance for specified end cracks of prunes in the minimum grade standards for natural condition prunes and in those for processed prunes; and

(15) The effective time of the proposed amendments.

The material issue, presented on the record of the hearing, involving the proposal by certain independent producers of prunes, was concerned with amending the order to provide for:

(16) A method of electing nominees for selection of independent producer member and alternate member nominees to represent each of the seven districts so as to provide for the obtaining of lists of candidates and subsequent mail balloting.

The material issue, presented on the record of the hearing, involving the proposal by independent handlers, was concerned with amending the order to provide for:

(17) A change in basis for the allocation of the handler representation on the committee from a comparative tonnage to a final ratio.

The material issue, presented on the record of the hearing, involving the proposal of the Fruit and Vegetable Branch, was concerned with amending the order to provide for:

(18) Such other changes in the order as may be necessary to make the entire order conform with the proposed amendments thereto.

The following material issue, presented on the record of the hearing, involves the following proposal by certain handlers of prunes other than the cooperative marketing association:

(19) That the existing amended order be terminated.

Findings and conclusions. The following findings and conclusions on the material issues are based upon the evidence adduced at the hearing and the record thereof:

(1) Section 993.32 should be amended to provide a period of 60, instead of 20, calendar days after a vacancy occurs in the membership of the committee for a person to be nominated to fill the vacant position. The longer period generally would obviate the need for the committee to meet especialy to schedule a nomination meeting of the persons concerned. If the vacancy occurred near the end of the term of a member or alternate member, a special nomination meeting usually would not be necessary, in view of the regular nomination meetings in prospect. The fact that each committee member has an alternate lessens the need to comply with the shorter period of 20 days. Even so, the proponents indicated that the committee's policy would be to arrange for nominations to fill vacancies as soon as appropriate in order to keep the committee's membership up to full strength.

Also, it should be provided that nominations to fill vacancies in the independent producer member and alternate member positions may, at the discretion of the committee, be made by the incumbents of the remaining independent producer member positions. This optional method, if used by the committee, would preclude the need for following the method of holding a special nomination meeting in the applicable district. In determining which method to use, the committee should consider, along with other pertinent circumstances, whether the independent producers in the district affected had previously expressed their intent as to another nominee for the particular position who is acceptable to them.

The foregoing will require a slight conforming change in § 993.26.

(2) Section 993.27 should be amended to delete the present provisions which permit a producer-handler to represent independent producers on the committee, if, during the crop year immediately preceding that for which he is selected, at least 51 percent of the prunes handled by him were produced from plums grown by him. In lieu of those provisions it should be required that such a representative may not, during his term of office engage in any handling of prunes, either in a proprietary capacity, or as a director, officer, or employee of a prune handler. The interests of handlers are represented adequately on the committee by the representatives which are required by the order to be selected for that purpose. It is, therefore, desirable that independent producer representatives be confined to those whose interests lie wholly with that group, uncomplicated by any connection with the handler group. This would tend to obviate any question or criticism with respect to the motives of such a representative in connection with the votes cast by him in committee deliberations. In line with this spirit and intent, any independent producer representative who should engage in any handling action, even though isolated in nature, should automatically

become ineligible to continue to serve in that capacity.

It was indicated at the hearing that some producers may have bought stock in certain prune handler organizations, corporate or otherwise. It was argued that such ownership of stock should not operate so as to make a producer ineligible for selection or to continue to serve further in that capacity unless, in addition, he exercises some control over the business operations of the particular handler, or he is employed by such handler. In other words, that, in the absence of some degree of control or employment, the handler interest would not be of sufficient degree to preclude serving as an independent producer representative. This position is believed to be sound and reasonable. It would place independent producers in the same general situations as the producers who are members of the cooperative association which is engaged in the handling of prunes.

On the other hand, the present practice of permitting independent producers who also exercise some degree of control over, or who are employed by, prune handler organizations to vote in connection with nominations for independent producer representatives should be continued in effect. Such an action obviously does not require the safeguards referred to above as being necessary to insure against any conflict in interests between the producer and handler groups. In addition, it gives appropriate recognition and effect to the status of such persons as being producers of prunes.

The language of § 993.27 also should be amended to make it clear that its provisions relate only to independent producers of prunes. Those provisions are obviously not appropriate for application to producers who are members of the cooperative.

(3) Section 993.28 (a) (1) should be amended by changing the boundaries of three of the seven districts delineated therein, from which independent producer nominees for seven member and seven alternate member positions on the committee are elected. Specifically, the counties of Siskiyou, Shasta, Trinity Tehama, Glenn and Colusa, which now comprise the west side of District No. 1, and Yolo County which is now in District No. 2 should be removed from their present districts and added to District No. 7. Such redistricting would more nearly equalize the numbers of producers and the tonnages of prunes produced in the respective districts. The transfer of Yolo County would achieve better delineation of Districts Nos. 2 and 7 from the standpoints of similarity of cultural practices and of types of prunes produced.

(4) Section 993.34 should be amended to require that any recommendation submitted to the Secretary by the committee relating to marketing policy, grade and size regulations, salable and surplus tonnage regulations, green diversion or surplus disposition shall be on the basis of an affirmative vote by at least 75 percent of the members present, provided that at least 11 members vote affirmatively on any such recommendation. In case a fractional number results from the application of the 75 percent, the next highest whole number should be considered the result. The proposed change from the present provision, which requires at least 16 affirmative votes from the total of 21 members or alternates for the committee to adopt any such recommendation, would not permit a small minority of committee members to defeat the adoption of a committee recommendation by absenting themselves from the meeting. It was testified at the hearing that such instances had occurred in the past. Under the proposed change the committee should be in a better position to take prompt action on important matters, and the incentive for larger attendance at committee meetings should be greater. With full attendance of 21 members or their alternates, the proposal would require 16 affirmative votes, and in any event not less than 11 affirmative votes would be needed, which is a minimum majority of the full committee of 21 members.

Section 993.34 also should be amended to eliminate the requirement that the committee file with the Secretary a verbatim record of those portions of its meetings relating to diversion privileges and disposition of surplus tonnage, but the present provisions of the order requiring the committee to file with the Secretary a verbatim record of those portions of its meetings relating to marketing policy, grade and size regulations, and salable and surplus percentages should not be changed. Since the latter three matters are mostly considered by the committee at particular meetings as prescribed by the order and involve or relate to rule making actions, elimination of the verbatim record requirement in respect to them is inadvisable. On the other hand, diversion privileges and surplus disposition ordinarily do not involve rule making, and these matters are considered frequently and sometimes without advance notice, in committee meetings throughout the crop year. In these circumstances, it may be impractical to obtain the services of a professional reporter, which are costly and not always available on short notice. In the absence of a verbatim record covering the committee's considerations of diversion privileges and surplus disposition, the Secretary still would have available to him sufficient information from the committee's minutes, the detailed notes of the committee's stenographer, the reports of the Secretary's representative, and the special reports which the committee is required by the order to file with the Secretary relative to its proposals to dispose of surplus prunes.

Section 993.34 should be further amended to provide that whenever the committee votes on any matter involving a recommendation or proposal to the Secretary, it shall report promptly to him the individual votes cast in connection therewith, and, in addition, the committee shall report to the Secretary individual votes cast in connection with any other matter on which there is a roll call. This provision should replace the present requirement that the committee shall report to the Secretary the individual affirmative or negative votes on any proposition voted upon by the committee. The proposal is desirable in that it would dispense with roll call votes on minor propositions involving routine actions on which the Secretary would have no need of information as to each vote. However, a roll call vote should be mandatory on matters requiring decisions by the Secretary or on controversial matters where a voice vote is not conclusive as to the wishes of the majority of the members present. The chairman of the committee should grant a request by the Secretary's representative attending a committee meeting to have a roll call vote on any matter under consideration.

(5) Sections 993.37 (f) and 993.80 should be amended to require the committee to submit to the Secretary not later than the fourth Tuesday of July of each year (instead of by June 20 as now provided) a budget of its anticipated expenditures and the recommended rate of assessment for the ensuing crop year and the supporting data. The committee has found it impractical to recommend a budget of expenses and a rate of assessment prior to recommending salable and surplus percentages without having, as a basis for those recommendations, a reasonably accurate estimate of the salable tonnage. Under the proposed amendment discussed below, the committee would submit to the Secretary about the middle of July in any crop year its second recommendation as to salable and surplus percentages. Hence, the committee should have a reasonable period of time to submit its financial recommendations to the Secretary after it recommends the salable percentage, which is one of the factors determining the amount of salable tonnage.

(6) The order should be amended (in §§ 993.45, 993.48, 993.49, and 993.59) to provide that the committee shall promptly give reasonable publicity to producers, dehydrators, and handlers of the contents of each marketing policy report submitted to the Secretary, of each report modifying or changing a policy report, and of each recommendation of the committee and regulation issued by the Secretary which relate to superseding grade or size regulations or to the establishment of salable and surplus percentages. It should be further prescribed that such publicity may be given through newspapers having general circulation in the area or through other channels, but the committee may use any or all of such media.

The order now provides, in respect to the reports, recommendations, and regulations referred to above, that the committee shall give reasonable notice through newspapers having general circulation in the area and may give such notice through other channels to producers, dehydrators, and handlers. The giving of notice through newspapers is now mandatory, while the proposed amendment would make the use of newspaper publicity by the committee permissive but would require that reasonable publicity be given of these matters through such channel or channels as the committee may select.

The committee, in collaboration with the California State Prune Marketing Program, prepares and issues a news let-

ter known as the "Prune Program News," which is mailed to everyone of record in the California dried prune industry soon after important program events occur. Copies are mailed not only to producers, dehydrators, and handlers, but to handlers' employees, to the Agricultural Extension Service, news services, persons conducting farm radio programs, and other persons on request. Information relative to marketing policy reports, committee recommendations, and regulations issued by the Secretary, as well as other information of interest to the industry, is included in the letter. Press releases issued by the committee may not be used by some newspapers in the area or may be edited so as to present incomplete information to the industry. Consequently, newspapers cannot be relied upon to disseminate the information as adequately as is desired. However, the committee does not wish to be precluded from using the media of newspaper publicity. The proponent's intent, as expressed at the hearing, is not to reduce the amount of information going to the industry but to see to it that all persons in the industry directly receive current, full, and factual information.

(7) Section 993.48 should be amended by the addition thereto of provisions specifying size requirements for prunes treated as surplus substandard prunes. The requirements in this regard which are now included in the rules and procedures issued pursuant to the order should be made more stringent in one respect and should be included in the order.

Under the provisions of § 993.48 (e) any natural condition prunes tendered to a handler by a producer or dehydrator, which fail to qualify as standard prunes, may (a) At the producer's or dehydrator's option, be returned to such producer or dehydrator for sorting; or, (b) be turned over to the handler unsorted to be held by him, as substandard natural condition prunes, for the account of the committee; or (c) by agreement between such producer and handler or dehydrator and handler be received by the handler for sorting or disposing of such prunes unsorted pursuant to the provisions of § 993.48 (e) (2) which involve the issuance of a certificate of appraisal on the substandard prunes. This certificate shows the percentage of such prunes comprising offgrade prunes necessary to be removed therefrom for the remainder to be standard prunes. A quantity of prunes equivalent to the weight of such offgrade prunes represented by the application of such percentage to the total tonnage so appraised and certificated must be treated as substandard prunes and held by the handler as such for the account of the committee.

In respect to substandard prunes tendered to a handler by a producer or dehydrator under (b) above, the present rules and procedures (7 CFR, 1952 Rev., 993.148 (d)) provide that the weighted average size count of substandard prunes of a size count of 121 or less prunes per pound, which are turned over to a handler unsorted to be held by him as substandard prunes, for the account of the committee, shall be no greater when delivered to the committee than the weighted average size count of such offgrade prunes as shown on the applicable certificates of inspection issued to the handler for the particular crop year, except for such tolerance allowances in connection with shrinkage in weight as the committee may establish.

This rule should be incorporated in the order as a provision thereof. Substandard prunes which are received as such by a handler must, according to the provisions of the order, be set aside by the handler as surplus prunes and held for the account of the committee separate and apart from any standard prunes held by him. The equivalent quantity basis referred to above does not apply to such substandard prunes and they must, in the aggregate, be no smaller in size and be the same prunes when delivered to the committee by a handler as when he receives them from producers. The handler merely holds such prunes as bailee for the committee and unless and until the committee sells them to him, he has no right to sort them in absence of specific instructions from the committee to do so. Therefore, there is no occasion for the allowance of any size tolerance in that regard. On the other hand, it should be recognized that prunes may shrink in weight under storage conditions and the committee should have authority to grant appropriate tolerance allowances therefor.

In respect to substandard prunes tendered to a handler by a producer or dehydrator under (c) above, the present rules and procedures (7 CFR, 1952 Rev., 993.148 (d)) provide that the weighted average size count of substandard prunes of a size count of 121 or less prunes per pound which are held for the account of the committee by a handler on the equivalent quantity basis shall not exceed by more than 20 prunes per pound, when delivered to the committee, the weighted average size count of such offgrade prunes in appraisal lots as shown on the applicable certificates of appraisal issued to the handler for the particular crop year.

This rule also should be incorporated in the order as a provision thereof, except that the maximum tolerance should be reduced from 20 to 5 prunes per pound. The maximum tolerance of 20 prunes per pound was incorporated in the present administrative rules to prevent producers' and dehydrators' equities in substandard prunes in the surplus pool from being diminished appreciably by handlers in satisfying their equivalent obligation to the committee with prunes of substantially smaller average size than those which the handlers received. Some tolerance is necessary in this regard because smaller prunes (i. e., those of higher size counts) contain a greater percentage of defects than do larger prunes. Due to this fact and the customary size grading practices of handlers which involve the commingling of different lots of prunes, the prunes which handlers would have available for delivery to the committee tend to consist of smaller prunes than the weighted average size count of the offgrade prunes received by them under appraisal certificates. It was testified at the hearing that operating experience has shown that the tolerance of 20 prunes per pound does not protect producers' interests sufficiently and that the proposed narrower tolerance of five prunes per pound would accomplish that purpose and would not inflict a hardship on handlers. The narrower tolerance would require more sorting by handlers of appraisal lots in order to satisfy their equivalent quantity obligations to the committee with as many of the actual defective prunes in each appraisal lot as practicable. Such additional sorting should result in an improvement in the quality of prunes disposed of by handlers and under certain conditions should increase the value of the prunes in the surplus pool represented by the equivalent quantity by reason of their increase in size.

The present rules and procedures (7 CFR, 1952 Rev., 993.148 (d)) further provide that any substandard prunes of a size count of 122 or more prunes per pound, whether received as such or in appraisal lots, which are held for the account of the committee by a handler shall have no limitation with respect to the weighted average size count thereof when delivered to the committee. It is further prescribed that such substandard prunes shall be treated as a size category separate and apart from any other substandard prunes held by the handler, and when delivered to the committee, the weighted average size count thereof shall not be averaged in width nor affect the weighted average size count of any other substandard prunes which the handler delivers to the committee.

This rule likewise should be included in the order. With respect to all surplus substandard prunes which a handler receives as 122's and smaller, he should be required to deliver to the committee only the required tonnage, irrespective of size. It is not common practice to grade prunes smaller than size 121 into uniform size groups as is the case with 121's and larger because any of the former are so small that it does not pay to divide such prunes into size groups for market purposes. Moreover, the prunes in a lot of 122's and smaller tend to lack uniformity in size; for example, the variation in the size count of a given lot could be 50 points or more. This makes it difficult to determine with reasonable accuracy the weighted average size of 122's and smaller. Lack of size restrictions on the delivery by handlers of surplus standard prunes which are received as 122's and smaller eliminates the need of including prunes of such smaller sizes in the computation of any weighted average size count. Thus, it is unnecessary to introduce in the computation of an average applicable to the more valuable, larger sizes the errors which are bound to occur in size grading prunes of size 122 and smaller.

If the proposed amendments relating to size requirements for prunes treated as surplus substandard prunes are put into effect, it is contemplated that the comparable rules and procedures previously issued pursuant to the order will be revoked effective as of that same time.

(8) Experience has shown that the price charged the European importer for California prunes is a very important

factor in determining the volume of this fruit imported into Europe. The price factor assumes even more importance in its effect on the volume of European imports of California prunes when importers must pay premiums to obtain dollars with which to buy the fruit. In recent years, Europe has imported only a small volume of California prunes when export prices have approximated domestic prices. For example, a much larger volume of California prunes was exported to Europe during the 1951–52 marketing season, when prices to European buyers were relatively low, than in 1952–53, when such prices were relatively high. The prices of California prunes to European buyers were relatively low in 1951–52, mainly due to the availability of large supplies of California prunes and the export payments made by the United States Department of Agriculture to U. S. exporters. Those payments reduced the prices of the prunes to foreign importers below the domestic prices for prunes.

During 1951–52, the committee disposed of a portion of the standard prunes in the surplus pool for use as animal feed, a very low return outlet, at a considerable sacrifice in the returns to producers. It is believed that this disposal of standard prunes could have been avoided and the total returns to producers would have been greater if California prunes had been sold in export at prices somewhat below those which actually prevailed in the export outlets, thereby moving into those outlets an additional quantity of prunes equivalent to that disposed of for animal feed. Even with the somewhat lower prices needed to move the additional tonnage to Europe, the total returns to producers would have been greater, because the net return per ton to them from such export sales would have been substantially more than that from the sales of prunes for animal feed. In fact, it appears that the net return per ton to producers from export sales at the somewhat lower prices would have been considerably greater than that from the animal feed sales even if the producers, instead of the Department, had subsidized such export sales from surplus pool funds.

This result, however, could not be achieved under the present provisions of the amended order which were in effect during the 1951–52 marketing season. These provisions require that the estimated commercial export requirements for prunes, along with the domestic requirements, be included in the estimates upon which the salable percentage is based so that the cost of prunes to the exporter is approximately the same as the cost to the domestic buyer. Sales of surplus tonnage by the committee to handlers for the purpose of augmenting the salable tonnage for use in domestic and foreign trade channels generally cannot be made at a price below that which reflects the average price received by producers for salable tonnage plus accrued charges for receiving and storing surplus tonnage. Other order provisions for disposing of surplus tonnage in export channels are restrictive as to the conditions which must prevail before such sales can be made or impose rigid minimum pricing in respect to sales of such tonnage for export. Due partly to these provisions, export tonnages in 1951–52 were so priced, notwithstanding the export payments made by the Department to U. S. exporters, that Europe would not import all of the California prunes available to that market, after an adequate supply of prunes was provided for domestic and other foreign requirements. Consequently, the above-mentioned disposition of prunes in the animal feed outlet occurred.

These deficiencies in the order should and can be corrected by amending it to provide the mechanism, hereinafter referred to as "the proposed export plan," whereby exports of California prunes can be so priced in seasons of heavy supply of this fruit that the volume of exports and total returns to producers would be maximized, whether exports are subsidized with surplus pool funds, Federal funds, or both. In loose terminology, the proposed export plan has been referred to as "the two-price system."

Accordingly § 993.59 should be amended to permit the committee, under certain conditions, to recommend a salable percentage which excludes the estimated market requirements for prunes of any foreign country, or any group of foreign countries, designated by the committee in its recommendation. As a condition precedent to such a recommendation, the committee would need to determine that, based upon then existing conditions, the total estimated supply of prunes for the ensuing crop year will exceed the total probable market requirements in domestic and foreign commerce for that crop year to such an extent that to include all of them in the estimates upon which the salable percentage is based would not tend adequately to effectuate the declared policy of the act. Further, the committee would need to determine that the market requirements for prunes of those countries could be increased, to an extent sufficient to effectuate the declared policy of the act more adequately, if those requirements are supplied under the proposed export plan at prices somewhat lower than the domestic prices, but at prices considerably higher than those obtainable in animal feed outlets. The basic objective of the act is to increase returns to producers within the parity limit. Therefore, the decision as to whether to use the proposed export plan should be based primarily on that criterion. In this regard, such decision should take into account the fact, among others, that the compensating payments discussed below would be furnished from the sales proceeds of surplus tonnage.

So that the committee and the Secretary would have the necessary information upon which to base such a decision, § 993.41 should be amended to include the necessary additional factors which the committee would need to consider and include in its marketing policy report to the Secretary. These additional factors should cover the estimated tonnages of prunes marketed in recent crop years in foreign commerce, and also the estimated probable market requirements for prunes for the ensuing crop year, with the past and prospective requirements segregated separately from each other and by countries or groups of countries in such a way as to reflect the apparent variables, if any, in the requirements under different pricing conditions. Included also should be estimates of how much prune tonnage foreign countries might be expected to take at a price level comparable to that expected to prevail in domestic commerce and how much tonnages those markets would take at price levels reflecting varying differentials from the domestic price level. The information would be necessary in estimating whether use of the proposed export plan for a particular season would increase overall returns to producers from the total of the salable and surplus tonnages as compared with use of the plan of including all estimated commercial market requirements, both domestic and foreign, in the estimates upon which the salable percentage is based. Also, consideration of the proposed additional marketing policy factors would be necessary, if the proposed export plan is to be used, for determining which foreign countries should have their market requirements excluded from the estimates upon which the salable percentage is based and included in the estimates upon which the surplus percentage is based. It is expected that such countries would be those in Europe principally, since experience has demonstrated that greater quantities of California prunes are imported by those countries at lower prices than are imported by them at higher prices. However, the committee should be permitted to exclude the estimated market requirements for prunes of other countries than those of Europe from the estimates upon which its salable percentage recommendation is based, if the committee should believe that such other countries could and would have a considerably greater demand for California prunes if they were afforded a reasonable price concession. Economic and other conditions affecting a foreign country's demand for California prunes may vary radically from year to year.

Section 993.41 should be further amended to require the committee to consider and include in its policy report such other factors, in supplying foreign commerce, as may tend directly to affect, burden, and obstruct normal channels of domestic commerce. For example, if certain foreign countries should be supplied at prices reflecting differentials from the domestic prices, the committee should examine various possible differentials, in conjunction with related transportation costs and export expenses, to ascertain whether the differentials would encourage, without other means of control, the profitable reimportation into the United States of California prunes to the competitive disadvantage to domestic commerce in this fruit. As another of many possible examples, the committee should examine the various possible differentials to determine whether use of them would cause diversion of prune tonnage to foreign commerce for which demand exists in domestic commerce at higher prices.

The additional marketing policy factors mentioned above should be considered by the committee and included

in its policy report to the Secretary regardless of whether it recommends use of the proposed permissive export plan for a particular season. The information developed would be valuable in relation to whichever method of regulation is selected for a particular season under the order as it is proposed to be amended.

Section 993.41 should be further amended to provide that, in the event the committee contemplates that it will recommend to the Secretary that the proposed export plan be used for a particular crop year, it shall also consider, formulate, and include in its marketing policy its recommendation as to terms and conditions, including pricing formulae, for the sale of surplus tonnage which may be disposed of under the proposed export plan, and a compensating payment calculated to move the desired quantity of prunes in export.

The proposed export plan should permit handlers to export salable tonnage, for which they have paid the full price in the field, at a lower price than that received in the domestic market for the same size prunes, and recover at least part of their differential from compensating payments out of surplus pool funds. The committee should release surplus tonnage to all handlers at intervals throughout the crop year equal to the tonnage exported. Each handler should share in each release in the same proportion that his surplus holdings are to the surplus holdings of all handlers at the time of the release. The surplus tonnage so released would be sold at the prices developed from the pricing formulae established prior to the beginning of the marketing season or, if modified, in effect at the time. From the proceeds derived from such sales to handlers, a fixed rate per pound of prunes, would be earmarked as a fund to provide the compensating payments. Use of the plan should increase overall return to the producers, in that the replacement quantity would be sold from the surplus tonnage at a price which, even after the compensating payment is deducted would be for a considerably greater amount than such prunes would bring as animal feed.

In order to maximize the quantity of prunes sold in export, it would be important that the pricing formulae and compensating payments be established prior to the time handlers make any appreciable sales of new crop prunes in export. Therefore, consideration and recommendation in regard to these matters should be given by the committee in the development of its marketing policy. The same is true of other terms and conditions which would need to be prescribed in connection with the proposed export plan. For example, other terms and conditions might include, but would not be limited to, a stipulation as to which sizes of surplus standard prunes would be eligible for release under the plan, the amount per ton which handlers would be required to pay at the time of the release as an advance payment until size accounting and final settlement could be made, the time to be allowed handlers to accept offers and reoffers, and the export documents necessary to be furnished to the committee by handlers as proof of export.

It was proposed that the committee's meeting for adopting the marketing policy for the ensuing crop year be held not later than the third Tuesday in June in any year, at which time the committee would formulate, if it contemplated using the proposed export plan, terms and conditions, including pricing formulae and the compensating payments. It was further proposed that the Secretary be given seven calendar days in which to disapprove the committee's original recommendation as to the said terms and conditions. It was also proposed that, in any event, any disapproval by the Secretary relative to such recommendation must be removed prior to the time the committee makes its recommendation to the Secretary of salable and surplus percentages under the proposed export plan; otherwise, the plan would not be employed during the ensuing season. The deadline for the committee's recommendation on salable and surplus percentages, whether or not the proposed export plan was to be operative, was proposed to be the third Tuesday in July. The crop year begins on August 1 of each year. In support of these proposals, it was contended that: (a) Sufficiently reliable information would be available to the committee in June to develop sound terms and conditions to apply under the proposed export plan for the ensuing season; (b) the Secretary would not need to know what the committee had in mind in respect to proposed salable and surplus percentages at the time he acted on the committee's recommendations as to terms and conditions for the proposed export plan; (c) the committee would need to know the Secretary's action on the proposed terms and conditions prior to the time it recommended salable and surplus percentages; and (d) handlers would need to know what terms and conditions for the proposed export plan had been established for the ensuing season before they could make export sales of prunes, but they would not need to know the salable and surplus percentages before making such sales.

These proposals are denied in part as indicated below. While sufficient prune production and marketing information relative to the ensuing crop year is available in June for the committee and the Secretary to begin consideration of the marketing policy factors, more reliable information is available in July. Since the policy terms and conditions under the proposed export plan must be integrated with and related to the salable and surplus percentages, the Secretary would not be in a position to act on the committee's recommendation on the former without having its recommendation on the latter. Handlers should have a reasonably good idea concerning what the salable and surplus percentages will be before they sell new crop prunes in export. Moreover, if the committee's first recommendation as to salable and surplus percentages were not made until the third Tuesday in July, insufficient time would be allowed for rule making procedures to establish the percentages near the beginning of the crop year.

In lieu of the foregoing proposals, the following provisions should be substituted, regardless of whether the proposed export plan is to be used for a particular crop year. Section 993.42 should be amended to require the committee to hold its initial policy meeting not later than the third Tuesday in June preceding the beginning of the ensuing crop year, and to hold another meeting in this connection not later than the following July 12 (except that, if such date should fall on a legal holiday, a Saturday, or a Sunday, not later than the following work day) for the purpose of reconsidering its original marketing policy for the ensuing crop year, including the consideration of the Secretary's tentative views in respect thereto. The committee should submit to the Secretary, as promptly as is practicable after this second policy meeting, a report showing any revisions or changes it desires to make in its marketing policy for the ensuing crop year as formulated at its first meeting, together with the supporting data and the reasons therefor. In the event the committee has recommended that the salable and surplus percentages for the ensuing crop year should be established pursuant to the provisions of the proposed export plan, the Secretary should have the right to disapprove any terms or conditions, including pricing formulae and compensating payments, within seven calendar days after he receives in Washington, D. C., the committee's policy report developed at the second marketing policy meeting.

Section 993.43 should be amended to require that the original marketing policy report, together with any committee recommendation as to terms and conditions for the proposed export plan, for any crop year shall be submitted to the Secretary within ten days after the policy meeting held not later than the third Tuesday in June. The Secretary should notify the committee of his tentative views in respect to the committee's marketing policy as soon as reasonably practicable after he receives the report.

Section 993.44 should be amended so that if the committee subsequently determines that the marketing policy developed pursuant to the provisions of § 993.42, as they are proposed to be amended, should be modified or changed by reasons of changes in economic or other conditions, it shall make such modification or change in the manner provided for in the original formulation of the marketing policy, insofar as applicable, and shall submit promptly a report of such modified or changed marketing policy to the Secretary, along with the data which it considered in connection with the making of such modification or change. The provisions of § 993.44 should be further amended to provide that in case the salable and surplus percentages for the particular crop year were established under the proposed export plan, the Secretary shall notify the committee promptly of his views in regard to such modifications or changes, including any disapproval thereof.

Section 993.59 should be amended to provide that, after considering all available information and factors used in formulating the marketing policy, the committee, not later than the third Tuesday of June in any crop year, shall

recommend to the Secretary the establishment of a salable percentage and a surplus percentage during the crop year for which the marketing policy is developed. The committee should submit such recommendation to the Secretary within ten days after the initial policy meeting and the Secretary should notify the committee promptly of his tentative views in respect to the committee's initial recommendation as to such percentages. The committee should hold another meeting in this connection not later than the following July 12 (except that, if such date should fall on a legal holiday, a Saturday, or a Sunday, not later than the following work day) to reconsider its initial recommendations in the matter, including the Secretary's tentative views in respect to such initial recommendations. The committee should submit to the Secretary, as soon as practicable after the conclusion of this second meeting, a report showing any revisions or changes it desires to make in its initial recommendations on the matter, together with the supporting data and reasons.

The amendments described above should be adopted in lieu of those proposed at the hearing, since they would have the following advantages:

The committee and the Secretary would begin consideration of proposed marketing policy and regulations for the ensuing season in June. This is particularly important from the standpoint of permitting adequate time for such consideration when it appears that the proposed export plan may be employed, but it is important in any event.

The committee and the Secretary would have under consideration at the same time the proposed marketing policy and the proposed salable and surplus percentages, and also the terms and conditions applicable to the proposed export plan if its use should be contemplated.

In the event the Secretary does not agree with the committee's initial recommendations as to marketing policy and regulation for the ensuing season, adequate time would be allowed prior to the committee's second policy and percentage meeting in July to reconcile any different views held by the committee and the Secretary.

If, after the second meeting the Secretary should disapprove any terms and conditions relating to the proposed export plan and the committee, in view of such disapproval, believed it inadvisable to proceed with the proposed export plan for the ensuing season, it still would have time to revise its recommendations as to percentages prior to the beginning of the crop year so as to include all estimated commercial export requirements in the estimates upon which the salable percentage is based.

By holding a second policy and percentage meeting just prior to the middle of July, the committee would have available to it more reliable production and marketing information than it would have in June. For example, it would have the Department's July 1 estimate of the prune production for the ensuing crop year, handlers' reports as to their shipments during June, and other more up-to-date information.

More time would be allowed for rule making procedure which would permit the establishment of the final salable and surplus percentages earlier in the ensuing crop year.

Handlers would have more and earlier information upon which to base their export sales of new crop prunes.

If the proposed export plan should be in operation and the committee should wish to make a change in the applicable terms and conditions, the proposed revised provisions would permit the making of such changes effective quickly

In order to establish further the mechanism of the proposed export plan, § 993.63 (b) should be amended by including the additional provisions which are set forth below.

In any crop year in which the estimated market requirements of a foreign country or group of foreign countries are excluded from the estimates upon which the salable percentage is based, the committee should offer to sell, and sell, to handlers, a quantity of surplus standard prunes not greater than the aggregate quantity of standard prunes and standard processed prunes (calculated on the basis of natural condition weight) sold and shipped by all handlers for use in or shipment to such country or group of countries during that crop year. The total surplus tonnage sold to handlers as replacement of the salable tonnage exported should not exceed the total tonnage actually shipped in export to the specified countries during the crop year; otherwise, the intended allocation of prunes to meet the respective domestic and foreign requirements for the fruit would be disrupted and the purpose of the proposed export plan thwarted.

To afford an opportunity for equitable participation by all handlers in the proposed export plan, and to facilitate the disposition of surplus prunes, it should be provided that at the end of each month, or at the end of any period shorter than a month which the committee may establish, and to the extent that surplus standard prunes are available and uncommitted, the committee should offer a quantity thereof equivalent to the aggregate quantity of standard prunes and standard processed prunes (calculated on the basis of natural condition weight) sold by all handlers for use in or shipment to the specified foreign countries during the period just ended. Any cancellation of a sale in or for shipment to such countries should be adjusted in the period in which such cancellation occurs, or as soon thereafter as is reasonably practicable, by reducing the quantity of prunes subsequently offered by the quantity of prunes included in such cancelled sale. In any offer by the committee to sell surplus standard prunes to handlers under the proposed export plan, each handler should be given the first opportunity to purchase his share of the offer. This share should be determined in the same proportion that the respective surplus tonnage held by the handler is of the total surplus tonnage held by all handlers. If any handler should decline or fail to purchase any or all of his share of such offer, the remaining portion should be reoffered by the committee to all handlers who purchased all of their respective shares of such offer, in proportion to their respective shares. The total quantity of prunes offered to an individual handler should not exceed the total quantity of uncommitted surplus standard prunes held by him for the account of the committee at the time of the offer, unless otherwise authorized by the committee.

The bulk of the prunes set aside in the surplus pool are, in addition to the substandards, the standard prunes of least value consisting of the smaller sizes more suitable for disposition for juice or other manufacturing uses but not generally suitable for disposition for human consumption as prunes. Therefore, salable tonnage sold in export under the proposed export plan would be replaced primarily with juice type prunes. This is desirable, for by this replacement, prunes to meet the juice requirements, which in years of relatively large surpluses are not available in the salable tonnage in sufficient supply to meet the demand, could be released and made available for sale.

Some handlers are more active in the export business than others. A few handlers depend on export for a large percentage of their business and their juice market is limited. Although all handlers participate in the juice market, they do so to a varying extent. Some handlers depend on the juice market as an outlet for a much larger percentage of their handlings than those with well established export outlets. An automatic release of surplus standard prunes, suitable primarily for juice, equivalent to the quantity exported and allocated solely among the exporting handlers in proportion to the tonnage each one exported, might prevent the nonexporting handlers from getting juice prune stocks sufficient to supply their established juice markets. At the same time, it might force upon the exporting handlers a tonnage of juice prunes which they may not be prepared to market. This could have the effect of demoralizing the domestic juice market. The proponents, therefore, propose to supply the export markets under the proposed export plan at prices lower than the domestic prices by releasing a quantity of surplus standard prunes equivalent to the quantity of prunes exported to the specified countries, but allocated among all handlers, each to share in such allocation proportionately to his surplus holdings, but limited to the uncommitted surplus standard prunes held by him as far as practicable. This would minimize the necessity for physical transfer of surplus tonnage among handlers, which is costly and may create inequities. However, in the event that some handlers are holding surplus standard prunes which they will not or cannot buy, the committee should be permitted to make those prunes available to handlers who will and can buy them. Otherwise, the committee might lose the additional revenue which would accrue from such transfers. Therefore, the committee should be permitted to authorize exceptions to the requirement that the total quantity of prunes offered to an individual handler shall not exceed the total quantity of uncommitted sur-

plus standard prunes held by him for the account of the committee at the time of the offer.

The above arrangement alone would not compensate the exporting handler for the differential he would allow in supplying export markets at prices lower than domestic prices. Therefore, a portion of the proceeds derived from the sale of surplus should be paid to the exporting handler as compensating payments. The provisions for compensating payments will provide a method whereby the committee can equalize the burden of surplus disposition among producers and handlers.

Sale by the committee of surplus standard prunes to handlers under the proposed export plan should be made in accordance with pricing formulae. Since marketing conditions vary widely from season to season, it would be unwise to prescribe in the order rigid formulae fixing the price of the surplus tonnage at a given figure. Such formulae should be developed prior to the crop year in which they are to be used. The basic objective in their development should be to achieve a pricing of the surplus tonnage which will increase the volume of prunes exported at prices which will maximize returns to producers to the greatest extent practicable. The fixing of a definite price on the surplus before the field price is established might tend to set the field price at the level of the surplus price, and the whole purpose of the proposed export plan could thereby be defeated. Therefore, the committee may develop pricing formulae which may include the field prices as a factor so that the application of the formulae will result in surplus prices related to the field prices. The proponents, including exporting handlers, contend that if the handlers know what pricing formulae and compensating payments will be in effect for the ensuing season they will have sufficient information upon which to sell prunes in export, just as they can quote prices and make sales in the domestic market before they are sure what their actual raw commodity costs will be. Since there are handlers who do only domestic business, it would seem on the surface that the actual price of the surplus sold under the proposed export plan should be approximately the same as the average price paid in the field for prunes of like size, so as not to demoralize the domestic market. However, the committee should not be bound by a requirement for rigid adherence to an average field price. The very nature of the pooling operation, whereby the smaller and less valuable prunes are pooled, may prohibit the actual pricing in the field of certain sizes, or develop an unrealistic pricing for those sizes. The committee should have the latitude of employing some other yardstick to avoid realizing a very low return to the pool on certain sizes after pool funds are used for the compensating payments to exporting handlers. A combination of various formulae to cover all contingencies may need to be employed to meet the specific conditions of a given crop year.

Provision should be made in the order for changing the price formulae and compensating payments during a crop year in order to meet unforeseen emergencies or changes in marketing conditions. However, the possible effects of any such proposed changes should be considered very carefully by the committee and the Secretary before a decision is made in respect to them. The proponents of the proposed export plan are charting a new field. They should be allowed sufficient latitude in the provisions of the order to resolve problems, which will arise when or if the plan is used, on an economically sound basis.

The committee should withhold from the proceeds from each pound of prunes it sells under the proposed export plan for each period an amount equal to that established by the committee as the compensating payment calculated for that period to be paid to handlers for supplying the market requirements of the foreign countries excluded from the estimates upon which the salable percentage is based. The total amount of money distributed among handlers as compensating payments for such period should be limited to the funds so withheld from the proceeds of the surplus standard prunes so sold to handlers for that period. These provisions are necessary to provide a fund from which compensating payments may be made to handlers, and to assure that the money paid to handlers as compensating payments will not exceed the amount earmarked for that purpose.

The pool funds available for compensating payments should be allocated equitably among handlers in accordance with terms and conditions established by the committee. Handlers who have purchased their full shares of the surplus standard prunes offered for each period should have priority in allocation over handlers who have failed to purchase their full shares of the offer. No handler should be compensated at a rate greater than that established as the compensating payment for the particular period. If the rate of compensation to any handler is less than that established as the compensating payment for the period, the committee should release to the handler, in lieu of money and for use as salable tonnage, a quantity of surplus standard prunes held by him for the account of the committee sufficient to rectify the deficiency in the rate paid to the handler, the value of the surplus standard prunes so released to be established on the basis of the price at which prunes were offered during such period.

The exporting handlers who not only effect disposition of the surplus by making sales in export, but also accept the additional burden of buying their full shares of the surplus tonnage released for a particular period, should be given priority, so far as the allocation of money for that period is concerned, over handlers who do not buy their full shares of the offer. This does not mean that the money would be paid only to handlers who purchased their full shares. They should, however, receive their payments first. After giving those handlers priority, any money remaining in the fund should be allocated equitably among handlers who failed to buy their full shares of the surplus tonnage offered for that period, each to get his fair share of the remaining money plus enough prunes, valued at the prices at which they were offered for that period, to compensate him in the full amount to which he would be entitled. He would not be deprived of payment. He would, however, have to take part of it in prunes in lieu of money. If the proposed export plan is formulated and operated properly and domestic and foreign demand is reasonably good, the need for paying some handlers prunes in lieu of cash is not likely to arise. However, if less surplus tonnage is purchased for any period than was sold in export during that period and subsequently shipped, the compensating payments in money would be reduced because of the reduced revenue. Therefore, prunes might have to be used in part to satisfy the committee's obligation to handlers in order to avoid using additional pool proceeds at the expense of producers.

No handler should receive any compensating payments on prunes sold in export until actual shipment of the prunes is made to an eligible foreign country and satisfactory proof of the shipment is furnished to the committee. This provision is necessary to prevent the committee from making a payment on the basis of a sale which may later be cancelled, or on which shipment is unduly delayed to such an extent that it would fail to qualify for payment.

The committee should establish for each period a final date before which shipment of standard prunes in export must be made in order for the handlers making the sales to qualify for the applicable compensating payments. However, the committee should not establish any such date for any period during a crop year that would permit the handlers to ship the prunes later than the end of the crop year (July 31) and qualify for the compensating payment for that period.

Export sales and shipments early in a crop year would be desirable from the standpoint of expediting the disposition of surplus and the payment of the net proceeds to the producers. Therefore, provision should be made for the establishment of a final date for each period for the shipment of prunes sold during such period for the handlers to qualify for compensating payments. A sale in September that calls for immediate or reasonably early shipment is better than one that calls for shipment the following May. By setting a final date for shipment in order for a handler to qualify for payment for prunes sold during a given period would give preference to a current demand over an anticipated demand.

The proposed export program should be confined to the particular crop year. Therefore, the July 31 limitation on export shipments which would qualify for the compensating payments should be included in the order. By having authority to invoke time limitations on shipments in export, the committtee would be in a position to cut off the proposed export plan earlier than July 31 if it appeared that the uncommitted standard prunes in the surplus pool might be depleted earlier. Otherwise, the com-

mittee would run the risk of having the tonnage, exported and eligible for compensating payments, exceed the surplus tonnage available for replacement, which would mean using additional pool proceeds if the total obligation to handlers were to be met.

The maximum quantity of prunes for which a handler should be entitled to receive compensating payments under the proposed export plan during any crop year should generally be limited to the total quantity of surplus standard prunes, received from producers and dehydrators during such crop year and held by him for the account of the committee, uncommitted to anyone other than to him. However, if the committee should give a handler specific authority to exceed this limit and he qualifies under the proposed export plan for compensating payment on the excess, he should be entitled to receive it.

Such provisions are necessary to prevent having to use additional pool proceeds, or having to move prunes to the handler from another handler, in order to compensate the handler on his additional exports. However, if the handler has an opportunity to make more export sales than his uncommitted surplus holdings, he should be able to ask the committee for permission to make such additional sales. If other handlers are holding uncommitted surplus standard prunes equivalent to that of the handler's declared sales opportunity and the committee has assurance that they will buy that much tonnage, if offered, the committee should be enabled to authorize the exporting handler to proceed with his proposed export sales, for the committee would then know that it would have sufficient funds to furnish the compensating payments applicable to such sales. If the indicated conditions are met, it is expected that the making of such additional sales will be encouraged by the committee.

It is intended that the following proposed amendment may be used if standard prunes are pooled as surplus, regardless of whether the proposed export plan is operative for a particular crop year. The provisions of § 993.63 (b) (1) should be amended to provide that, in the event it appears the total salable tonnage is not, or will not be, sufficient to meet the estimated domestic and foreign requirements due to the expansion of foreign markets in countries which were included in the estimates upon which the salable percentage is based, to a greater extent than was anticipated at the time the salable percentage was recommended to the Secretary, the committee may offer to sell, and sell, to handlers for resale, surplus standard prunes sufficient to meet such deficiency in the salable tonnage. The quantity of prunes included in any offer to sell to individual handlers should be in such proportion as the committee determines will effect equity among all handlers. Prior to making any offer, the committee should determine the price at which the prunes included in such offer should be sold, taking into consideration factors and conditions affecting the marketing of prunes at the time of the offer and establishing a price consistent with those factors and conditions.

These provisions would authorize the committee to sell surplus standard prunes to handlers in the event it appears that the total salable tonnage will not be sufficient to meet estimated domestic and foreign requirements for the reason stated above, as well as when it appears that the salable tonnage is not sufficient to meet such estimated requirements, as now provided. Thus, the committee would have clearer authority to act earlier in the crop year to meet a deficiency in the salable tonnage if it appears that the salable tonnage would later be insufficient, instead of waiting until it appears that an actual shortage of salable tonnage currently exists.

The adoption of this proposal also would permit handlers to resell the surplus standard prunes sold to them in any outlets, while the present order requires sales by the committee of surplus standards prunes "to handlers for sale into, and for use in, such foreign channels in such quantities as are necessary to meet the increased demand." In other words, under the present provisions, handlers are required to resell the same prunes sold to them by the committee for use in the particular foreign country or countries with the unanticipated demand for prunes, but the smaller sizes of prunes available from the surplus pool might not and probably would not be the sizes in demand by the foreign buyers in that country. The proposed amended provisions would enable handlers to export suitable salable tonnage prunes which they have and use the prunes which they purchased from the pool as replacement in other appropriate outlets. In that manner the demands in the respective domestic and foreign trade channels would be met more adequately. The adoption of the proposal also would avoid possible losses of export sales by handlers, in that they would not need to wait for the actual release of surplus tonnage prunes before supplying the increased demand.

The above proposal would permit the quantity of prunes included in any offer to sell to individual handlers to be in such proportion as the committee determines will effect equity among all handlers, instead of the present rigid requirement that the quantity of prunes included in any offer to sell to individual handlers shall be in the proportion that the respective handler's sales in foreign channels bears to sales in such channels by all handlers. Experience has demonstrated the need for greater flexibility in the allocation of such releases among handlers. It is generally desirable to give all handlers an opportunity to participate in such releases in some degree. Handlers with no export business might be at a disadvantage if they were denied the right to a reasonable share of the release, because in such a situation their established market for the smaller prunes could be diminished by the exporting handlers. The complexities in this regard are such that it is impracticable to prescribe in the order a rigid formula for the allocation of the replacement sales which will be suitable and equitable in all possible situations.

The present order prescribes that no such sale shall be made by the committee at a price below that which reflects the average price received by producers for salable tonnage, plus accrued charges for receiving and storing of surplus tonnage. In lieu of this minimum price requirement, the committee should be permitted to determine, subject to the disapproval of the Secretary the prices at which the prunes should be offered to handlers, after taking into consideration factors and conditions affecting the marketing of prunes at the time of such offer, and establish a price consistent with such factors and conditions. If a slight shading of the price would accomplish the disposition of surplus prunes, which might not be possible if the present minimum requirement were retained, and if such reduction would not adversely affect the marketing of prunes in commercial trade channels, the committee should be able to price the surplus so as to dispose of it at a greater advantage to producers.

On June 10, 1952, the then Secretary of Agriculture suspended (17 F R. 5209) certain provisions of § 993.63 (b) (1) of the order. The suspension action was necessary in order to facilitate disposition of surplus tonnage and maximize returns to producers. The suspension action permitted the committee to fill an unanticipated demand for prunes which developed in Norway by removing the above-mentioned requirement that surplus prunes be offered to handlers on the basis of their proportionate sales in foreign channels, and by permitting the surplus prunes to be disposed of at a price below that which reflected the average price received by producers for salable tonnage plus accrued charges for receiving and storing of surplus tonnage. Had the suspension action not been taken, the sale of the surplus prunes to Norway would have been prevented. The proposed amendment to these provisions is in line with the suspension action, in that they would remove the average price and the rigid allocation requirements.

The proposed amended provisions of § 993.63 (b) (1) could be employed in a marketing season when the proposed export plan is operating, but they are more likely to be used when the estimated market requirements of certain foreign countries, such as those in Europe, are not excluded from the estimates upon which the salable percentage is based. This is for the reason that an unanticipated demand for prunes is more likely to develop in European countries whose estimated requirements normally would be provided for in the salable tonnage only when the proposed export plan is not in effect than in countries, such as those in latin America, whose requirements for prunes would probably be allowed for in the salable tonnage under both the proposed export plan and the existing plan.

The present provisions of § 993.63 (b) (2) of the order permit the committee to offer to sell, and sell, to any handler a quantity of surplus standard prunes for export to any foreign country, which country was not included in the estimates upon which the salable percentage was based, in the event of proof of demand

for such quantity for that country. Provision is made for these sales to be made at negotiated prices, and the committee must require proof that any standard prunes so sold are used for the purpose for which they were sold. Under order operations to date, it has not proven practicable to operate under these provisions principally because they require that the same surplus prunes sold by the committee to the handler be resold and shipped by the handler to the foreign country involved, instead of permitting the handler to sell and ship his salable tonnage to such country and obtain replacement from the committee.

The present provisions of § 993.63 (b) (2) should be replaced by a new subparagraph, § 993.63 (b) (3) which should contain the following provisions for use regardless of whether the proposed export plan is operative for a particular season. In case a handler sells a quantity of prunes for shipment to and for use in a foreign country which, at the time the salable and surplus percentages for such crop year were recommended, the committee estimated would have no probable market requirement for prunes, the committee should be permitted, upon adequate proof of such sale, to offer to sell, and sell, to the handler a quantity of surplus standard prunes held by him for the account of the committee, and uncommitted, equivalent to the quantity so sold for use in the foreign country, caluculated on the basis of natural condition weight. Prior to making any offer, the committee should determine the price at which the prunes included in that offer should be sold, taking into consideration the price received for the quantity of salable tonnage prunes sold for use in such country by the handler, together with other factors and conditions affecting the marketing of prunes at the time of the offer. The committee also should have authority to sell direct such a foreign market surplus standard prunes or surplus standard processed prunes for use in the foreign country in which the demand develops if it determines that the sale reasonably cannot be made by handlers from salable tonnage. The committee should be permitted to make any such direct sale at a negotiated price.

The proposed amended subparagraph (3) would remove the objectionable feature of the present provisions of § 993.63 (b) (2) because it would permit the replenishing of the salable supply of an individual handler who uses his salable tonnage to supply an unanticipated demand for prunes in a country which the committee estimated would have no demand for prunes. The committee could release a quantity of standard surplus prunes to that handler equal to the tonnage he so exported. The release to the handler should be made on the condition that the prunes are shipped to and used in the particular country. Because of the provision for a possible price concession, or at least a price different from that applicable to prunes sold in countries estimated to have a demand for prunes, the consumption of prunes sold in these unanticipated outlets should be confined to those outlets. Otherwise, reexportation to other countries might have an adverse effect on further acceptance of prunes at the established prices in recognized outlets.

The committee should require adequate proof that the handler has made a bona fide sale and it should be satisfied that the prunes which the handler is selling to a country where the unanticipated demand develops will be used in that country, before it releases surplus standard prunes to that handler. If the handler should make an appreciable price concession to get the unanticipated business, he should make the sale contingent on his getting replacement from the committee out of the surplus tonnage. He would have no assurance that the committee would release to him surplus prunes at a price low enough to recover the differential needed to make the export sale. Therefore, he should so condition the sale as to afford himself protection in this regard.

The new proposed subparagraph (3) should also provide for the making of direct sales by the committee in appropriate circumstances of surplus standard prunes for shipment to and use in countries originally estimated to have no probable market requirements for prunes. It is possible that an unanticipated demand for prunes so large that handlers could not supply it might develop in a country which the committee originally thought would not buy prunes. It is also possible that the buyers in such a country would prefer to negotiate directly with the committee. In that case, the committee should be permitted to make the sale directly and engage the handlers to do the packing. While the committee should be in a position to make direct sales when necessary, export business should be left in the handlers' hands and supplied on a normal commercial basis whenever practicable. The committee should have authority to make any such direct sales at negotiated prices in order to facilitate disposition of the surplus and to maximize returns to producers.

The present provisions of § 993.63 (b) (3), relating to notice to the Secretary of proposed sales for export, should be replaced by the following provisions in § 993.63 (b) (4) The committee should file with the Secretary, by telegram or air mail letter, seven calendar days prior to making any offer to sell under either proposed amended subparagraph (1) or proposed amended subparagraph (3) of § 993.63 (b) surplus standard prunes or surplus standard processed prunes complete information with respect thereto, including the basis for the proposal. The Secretary should have the right to disapprove within that seven-day period the making of such an offer or any term or condition thereof. Similar notice of individual offers under proposed amended subparagraph (2) of § 993.63 (b) which relates to the periodic offers and solely to the proposed export plan should not be required but the committee should keep the Secretary currently informed in respect thereto. The provisions in respect to the furnishing of information to the Secretary and his right to disapprove are necessary to insure that the objectives of the order are achieved. Because of the need for quick action and the fact that the structure of the proposed export plan would have been agreed upon by the committee and the Secretary before operations under it commenced, prior notice to the Secretary of individual offers of surplus tonnage to handlers under such plan should not be required. However, the committee should keep the Secretary currently informed in respect to such offers, since he along with the committee is responsible for program operations.

(9) The present provisions of § 993.63 (e) (2) of the order authorize the committee to offer to sell, and sell, to any handler, a quantity of surplus standard prunes for any manufacturing use, which manufacturing use is not included in the estimates upon which the salable percentage was based, in the event of proof of demand for such quantity for such purpose. Any such sale may be made at a negotiated price, and the committee must require proof that any standard prunes so sold were used for the purpose for which they were sold.

These provisins should be amended in order to clarify their intent by specifying that the manufacturing use was not included in the estimates upon which the salable percentage was based, either because it was considered to have no probable market requirement or because it was not considered in any way by the committee.

(10) Section 993.63 (f) should be amended by the addition of provisions requiring that whenever a certificate of inspection applicable to prunes turned over to a handler unsorted by a producer or dehydrator to be held by the handler as substandard natural condition prunes for the account of the committee pursuant to the provisions of § 993.48 (e) (1) (iii) shows that such prunes fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A) when considered in terms of the entire lot, as they relate to the defects of mold, imbedded dirt, insect infestation, and decay, such prunes shall be sold or disposed of by the committee only to persons who are not handlers of prunes and only for disposition as animal feed, for distillation, or for any use other than for human consumption. The amendment should further require that whenever a certificate of appraisal issued pursuant to the provisions of § 993.48 (e) (2) shows that if the quantity of substandard prunes to which such certificate applies were to have all offgrade prunes removed therefrom such offgrade prunes would fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A) as they relate to the above-mentioned defects, a quantity of prunes equivalent to the weight of such offgrade prunes necessary to be removed from the total tonnage shown on the applicable certificate in order for the remainder to be standard prunes shall be sold or disposed of by the committee only to persons who are not handlers of prunes and only for disposition as animal feed, for distillation, or for any use other than for human consumption.

Prunes which fail to meet the permitted tolerances for mold, imbedded dirt, insect infestation, or decay constitute the lowest grade of prunes and are considered unfit for human consumption either as prunes or in the form of prune products. The proposed amendment recognizes this fact since it is designed to prevent the use of prunes excessively affected with such defects for human consumption as food in any form and to require their use in outlets where the sales returns are the lowest.

Before distributing the net proceeds from the disposition of surplus tonnage to equity holders (generally producers and dehydrators) of the surplus pool, it is expected that the committee will establish a lower rate of return for prunes which are pooled pursuant to the provisions of the proposed amendment than for other surplus substandard prunes. In this way producers and dehydrators will be afforded the financial incentive to improve the quality of prunes produced and to keep out of their deliveries to handlers prunes which are offgrade due to the defects of mold, imbedded dirt, insect infestation, or decay. Since handlers would receive fewer of such prunes, the inclusion of these provisions should reduce the quantity of them included in handlers' shipments to the trade, whether for human consumption as prunes or for manufacturing use, thereby increasing consumer acceptance and trade demand for prunes. It should also increase the returns to producers from the surplus substandard prunes which are used for manufacturing purposes for human consumption. Substandard prunes which are affected by any of these four major defects ordinarily bring a lower price from manufacturers, since such defects may harm the wholesomeness of the prune products manufactured from them.

It was testified at the hearing that the use of the appraisal method of delivering prunes by producers to handlers had grown to a far greater extent than was originally intended. One of the main purposes of this method was to avoid having the producer take his prunes back to his ranch for further sorting if the prunes failed to qualify as standard prunes by a slight margin. However, it has developed in program operations that prunes have been delivered to handlers under the appraisal method which contain defective prunes considerably in excess of the tolerances for standard prunes. This development has tended to make some producers and dehydrators careless with respect to the quality of prunes which they produce and deliver to handlers. The proposed amendment should help to overcome this weakness in the quality provisions of the order to the extent that prunes are affected with the four defects mentioned. It is generally conceded that the prune industry has not accomplished all that it originally intended at the time the order was put into effect in 1949 in the way of improving the quality of prunes produced and marketed. The proposed amendment affords producers the opportunity to take a step in that direction. If the proposed amendments are adopted, handlers will also contribute to the improvement of order operation affecting substandard prunes delivered on appraisal certificates in that, as discussed under material issue (7) above, the present tolerance of 20 prunes per pound with respect to sizes of prunes delivered by handlers to the committee on the equivalent quantity basis would be reduced to five prunes per pound. This should result in an appreciable increase in the sorting of appraisal lots by handlers.

In the case of substandard prunes received by a handler as such, the entire quantity covered by a certificate of inspection would have to be disposed of by the committee as animal feed, for distillation, or for any use other than for human consumption if such quantity failed to meet the minimum standards in § 993.97 (Exhibit A) as relate to the defects of mold, imbedded dirt, insect infestation, and decay. In the case of substandard prunes received by a handler under a certificate of appraisal only the quanttiy of prunes equivalent to the weight of the offgrade prunes necessary to be removed from the total tonnage shown on the applicable certificate for the remainder to be standard prunes would have to be disposed of for such purposes if the offgrade prunes covered by the certificate failed to meet such minimum standards. This difference is justifiable since appraisal lots should consist predominantly of standard prunes while substandard prunes received as such should consist predominantly of offgrade prunes. Consequently, it is more practical from an economic standpoint to remove offgrade prunes from appraisal lots than from lots of substandard prunes received as such. In either situation, the quantity involved would be the quantity which is delivered to the committee for disposition as substandard prunes.

The committee should not be permitted to dispose of the prunes arising from the foregoing obligations to handlers so as to minimize the possibility of the offgrade fruit reentering the channels of trade for human consumption.

It was set forth in the notice of hearing and argued at the hearing that the changes in the provisions of the order referred to above should be effectuated by adding a new subparagraph numbered (4) to § 993.48 (e) and a new paragraph lettered (g) to § 993.63. However, it appears more appropriate from the standpoints of order organization and avoiding the possibility of conflicting order provisions, to effectuate the changes by amending the provisions of § 993.63 (f)

(11) Section 993.63 should be amended by adding at the end a new paragraph lettered (k) which would authorize the committee to hypothecate binding written contracts for the sales of surplus prunes to any person, subject to the following restrictions, which restrictions should be set forth in, and form a part of, each such loan agreement: (a) The recourse of the lender shall be confined to the particular sales contract or the proceeds which are derived therefrom; (b) neither the Secretary, the committee, nor any of the committee's members, alternate members, officers, or employees, shall be liable for the repayment of the particular loan; and (c) the lender waives any right which he might otherwise have, in case of default in repayment, to take any action to obtain either possession or control of the surplus prunes involved.

It was testified that the growing of prune plums and the subsequent dehydration of them into prunes are very expensive operations, and that many if not most, prune producers lack sufficient funds to finance these operations from their previous accumulations of money. Also, that the situation is such that it is not generally practicable for the committee to make final disbursement of the net pool proceeds for a particular crop year until after it has ended. In an effort to alleviate this situation, the order now contains provisions (in § 993.63 (i) (2)) authorizing the committee to make, as sufficient funds accumulate, progress payments from the pool proceeds. However, this has not afforded adequate relief. It appears that the first progress payment which has been feasible has not been made until a considerable part of the crop year has elapsed, and that subsequent progress payments are not practicable in less than three-month periods thereafter. The adoption of the instant proposal should result in the making of these progress payments earlier in the crop year, in that it should enable the committee to acquire the necessary money sooner.

For instance, in 1952, two sales of surplus prunes produced in 1951 were made in export involving comparatively large quantities, namely one to Norway for about 6,400 tons, and another to the Republic of West Germany for about 7,300 tons. In each case, the shipment date was deferred for from one to two months, and payment was apparently not made until shipment. Experience under another marketing order program has demonstrated that it is feasible for the administrative agency to obtain loans in such situations, subject to the restrictions indicated above, as soon as firm contracts of sale have been executed. In addition, the committee has occasion to sell, in the aggregate, large quantities of surplus prunes to prune handlers and manufacturers of prune products, such as prune juice. The obtaining of loans in such cases after firm commitments of sales have been entered into would also seem to be feasible and promote the desired objective of disbursing the net proceeds from the surplus pool as soon as possible.

It is anticipated that loans of this nature will usually be made by recognized financial institutions, such as commercial banks. However, so long as the lender has the requisite amount of money available and is willing to lend subject to the indicated restrictions, there seems to be no reason for confining these lenders to any particular type, or types, of organizations. In fact, it should be permissible for the committee to obtain such a loan from a private person if it should appear to be appropriate and desirable.

It was argued at the hearing that this proposed lending authority should cover,

in addition to binding written contracts of sale, "other documented surplus sales commitments." However, the record is not clear as to the exact commitments in this latter category which were had in mind. But, it is concluded that, in any event, this portion of the proposal should be denied. In the case of a binding contract of sale, it is believed to be reasonably certain that the surplus prunes will be sold for the contracted price and that it will be paid. Even in such a situation, it is possible that the sale may not be consummated, such as by reason of a breach of the contract on the part of the contracting buyer. Nevertheless, such a happening is less probable, and, in case of breach, there would be a clear right of recourse against the contracting buyer for damages. These requisite assurances of loan payment would not be present in cases of "commitments" which have not reached this stage.

The proponents agreed at the hearing that, in the event the committee should find itself unable to obtain such sales proceeds, it would still have a strong, and compelling, moral responsibility to see to it that payment of the loan was made. It was testified that, even if an executed contract of sale should not be consummated by payment of the purchase price, the committee should, and would, repay the loan from other funds in the surplus pool, including any money which it might obtain from the sale of such prunes to another person, if that action should appear to be necessary to insure such repayment. It is agreed that the indicated way of handling those situations should be followed. However, it cannot be ignored that the following of such a procedure could result in embarrassment to the committee, as well as in other undesirable complications. The possibility of such a result should not be enhanced by extending the authority to instances where written sales contracts have not been executed.

It was also argued at the hearing that the contemplated restrictions set forth in (a) (b) and (c) of the first paragraph of this discussion should be set forth in the amendment in the forms of statements to those effects. It is believed that the need for such restrictions is so obvious as not to require any detailed discussion of them. However, it is considered that these objectives would be attained more effectively by requiring that such restrictions be incorporated in, and made a part of, each loan agreement. In that way, the lender would subject himself specifically to them, and it would be unnecessary to rely on general statements in those regards which are contained in the regulations.

(12) The present provisions of § 993.73 require each handler to file such price reports as may be requested by the committee, showing the weighted average price paid by such handler to producers and dehydrators for each size of prunes and the quantity purchased at each such price to enable the committee to determine the average price received by producers for the purposes set forth in paragraphs (b) (d) and (e) of § 993.63. Experience under order operations has shown that the committee sometimes needs these price reports for the performance of its functions under other paragraphs of § 993.63, and it should be permitted to require such reports in those circumstances. Therefore, the requirement should apply to § 993.63 generally, rather than be restricted to paragraphs (b) (d) and (e) of that section.

(13) Section 993.81 (c) should be amended so that any money collected as assessments during any crop year and not expended in connection with that crop year's operations may be used by the committee in paying its expenses for the operation of the program for a period not in excess of the first five months of the succeeding crop year. It should be further prescribed that the committee shall, from funds on hand, including assessments collected during the new crop year, credit, or make payment if so requested, within six months after the beginning of the new crop year, the aforesaid excess, as verified by audit, to each handler from whom an assessment was collected in the proportion that the amount of the assessment paid by the respective handler bears to the total amount of the assessments paid by all handlers during said previous crop year.

For the four crop years during which the order has been in effect, the assessment monies collected from handlers have exceeded the committee's administrative expenses due, among other reasons, to: Unanticipated sales by the committee of surplus tonnage prunes to handlers for use as salable tonnage, which prunes then became assessable; unexpended, budgeted reserves for contingencies; and underestimation of the proportion of the expenses to be charged against the surplus pool, which decreased the amount actually charged against the administrative fund. These excess funds, which are normally sufficient to defray the administrative costs of this program for a period of about five months, cannot be returned or credited to handlers until the committee's books are closed for the year and verified by audit. This procedure usually takes three or four months after the close of the crop year. Also, assessment revenue may not be available for the first three or four months, or longer, of a new crop year because of the time required in following rule making procedure for the approval of a budget of expenses and the establishment of a rate of assessment after the committee has submitted to the Secretary reasonably sound estimates pertaining to the costs of its operations for the new crop year. The proposed amendment would provide for the use of assessment funds from the previous crop year in excess of administrative expenses to meet expenses incurred during the first five months of the new crop year pending the receipt of assessment revenue. Such excess funds would otherwise be idle pending completion of the audit of the committee's accounts for the previous year. To the extent that such funds were available, the committee would not need to request handlers to make advance payments at a time when they generally need their available funds to purchase prunes. Handlers prefer that the committee use unexpended funds from the previous year during the interim period, rather than to advance additional funds for operations during that period. Also, they generally prefer that any excess funds due them be credited against their assessment obligations for the new crop year. The provision for the five-month period for use of the excess funds and the six-month period for refunding or crediting handlers with such excess would provide reasonable periods of time to safeguard against unforeseen delays in approving a budget of expenses, fixing a rate of assessment, and auditing the committee's accounts. It is contemplated that the committee will confine its use of these excess funds in paying the expenses of operations during the succeeding crop year to such period as that action may be necessary in case such use for the full five-month period is not needed.

Section 993.81 (c) should be amended further to provide that any money collected from assessments and remaining unexpended in the possession of the committee, upon termination of the order, shall be distributed in such manner as the Secretary may direct. In exercising this authority, it is intended that, insofar as is reasonably practicable, such refunds will be made pro rata to handlers of the then current crop year on the basis of their respective assessment payments after deduction of expenses incident to the operation of the program during the then current crop year up to the time of liquidation and the liquidation of the committee's affairs. The Secretary should be permitted to exercise sufficient discretion to be able to meet in an equitable and appropriate manner unusual situations which may arise upon termination of the order. Such unusual situations comprise, but are not necessarily limited to, those involving refunds of surplus assessment funds due handlers in connection with previous crop years which have not been paid because of inability to locate them, or for other reasons.

(14) Section 993.97 (Exhibit A) should be amended to revise the minimum grade standards for natural condition prunes and the minimum grade standards for processed prunes, as follows: (a) Exclude from the defect, skin or flesh damage, and from the category of objectionable defects (fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay for which the combined tolerance is now 10 percent, by weight) a defect defined in the proposal as "end cracks," consisting of callous growth cracks, at the blossom end of prunes, aggregating more than three-eighths of one inch but not more than one-half of one inch in length; (b) reduce the combined tolerance allowance for the above eight objectionable defects from 10 to 8 percent; (c) establish a combined tolerance allowance of 10 percent for such end cracks and the above eight defects, except give the first eight percent of such end cracks one-half value and any additional percentage of end cracks full value; and (d) in lieu of the present combined tolerance

allowance of 20 percent for off-color, inferior meat condition, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay, establish a combined tolerance allowance of 20 percent for such defects and end cracks as defined above, except give the first eight percent of such end cracks one-half value and any additional percentage of end cracks full value.

It happens infrequently that a particular year's prune production will contain an abnormally large percentage of prunes with end cracks of the type defined in the proposal. This was the case in 1952. Since the cracks are difficult to detect, the cost of hand sorting prunes (which reduces the returns to producers) in order to meet the present tolerance is disproportionate to the improvement in the final pack or added consumer acceptance. The defect in question is not considered objectionable within the reasonable percentage limits prescribed by the proposal. The tolerance relaxation for the end cracks would not appreciably affect the keeping quality of the prunes, since these end cracks are shallow in nature and are not generally conducive to mold and decay. However, if either or both of the latter should also be present, the prunes would be scored on the basis of those defects. The eight defects referred to above, for which the combined tolerance allowance would be reduced from 10 to eight percent, by weight, seriously affect the quality or appearance of the fruit and its acceptability to consumers. Within the limits prescribed, the amended specifications would permit a corresponding increase in the percentage of end cracks when a lot contains a lesser percentage of the more objectionable defects. This increase for end cracks should be augmented further by scoring the first eight percent of such defect as half value so as to provide a slight additional relaxation in that regard which is desirable. The relaxation of the tolerance for end cracks would be offset qualitywise by a reduction in the tolerances for the more objectionable defects. Therefore, the proposal would not lower the minimum grade standards.

Sections 993.48 and 993.49 now provide that any superseding grade regulation shall not be below the applicable minimum standards for grades of natural condition prunes and of processed prunes as now set forth in § 993.97 (Exhibit A) It is concluded that the proposed amendment meets this requirement.

Section 993.49 provides that the grade regulation with respect to the handling of prunes subsequent to their receipt by handlers shall at all times be comparable so far as practicable to the then current regulation in effect with respect to the receiving of natural condition prunes by handlers from producers or dehydrators. The proposed amendment meets this test inasmuch as the same changes would be made in the minimum standards for processed prunes as would be made in the minimum standards for natural condition prunes.

Subsequent to the hearings on the proposed amendments, the committee unanimously recommended to the Secretary that he issue, prior to the completion of formal amendment action on this proposal, a supplementary order providing superseding minimum grade standards for natural condition prunes and for processed prunes identical to the standards as proposed to be amended. The committee so recommended because it desired that said standards be made effective to cover all prunes produced in 1953 and because the amendatory proceedings would not be completed in time (by August 1, 1953) to accomplish that purpose.

On the basis of information submitted by the committee, the testimony at the hearing with respect to the proposal to amend the minimum grade standards, and other information available to the Department, a notice that the Secretary was considering the issuance of superseding minimum standards for grades of natural condition prunes and processed prunes was published in the FEDERAL REGISTER on July 8, 1953 (18 F R. 3970) After an opportunity was afforded any interested persons to file data, views or arguments pertaining either to the proposed regulations or to the procedure being followed with respect thereto, a supplementary order was issued making the superseding minimum quality standards effective on and after August 1, 1953. Such order was published in the FEDERAL REGISTER on July 31, 1953 (18 F R. 4495)

The inclusion of these superseding minimum standards in a further amended order will confirm the less formal action taken under the applicable provisions of the present order.

(15) It was proposed at the hearing that, if it developed that the amendments which might result from this proceeding could not be put into effect by July 15, 1953, the making of them effective should be delayed until August 1, 1954. It was argued that this way of handling the matter would be necessary because handlers normally acquire large quantities of prunes soon after the beginning of a crop year and they should know, at that time, the type and degree of regulation to which they will be subjected. In other words, that the putting of such amendments into effect during the now current crop year would create turmoil and uncertainty. Due to the complexities of a number of the proposals which were considered and for other reasons, it was not practicable to amend the order by July 15, 1953. However, in view of the present situation, it is not believed that there is any substantial and valid reason for delaying the putting of such amendments into effect until August 1, 1954, even if it should be assumed that such delay would not be precluded by the staleness of the economic information.

It was impliedly conceded at the hearing that a major obstacle to putting these amendments into effect during the now current crop year might be the adoption of the proposed export plan, and the several related amendments. Another major potential obstacle would have been the incorporation into the order of revised minimum grade standards (Exhibit A—§ 993.97) for the receipt and disposition of prunes. The other proposals, with certain exceptions discussed more fully hereinafter, related to routine matters which would not have been affected adversely.

With respect to the proposed export plan, it was generally agreed that it would be used only in crop years when there was a large surplus of prunes. Just prior to the hearing, there was a heavy frost in California, and, at the time of the hearing, the extent which it would reduce this year's crop was not known. It has developed that this year's crop will be relatively small. It has been found and determined that the estimated season average price for prunes for this crop year will exceed parity (18 F R. 4495) It was ordered that the regulation of prunes for the current crop year be in accordance with the provisions of § 993.50 of the order, which provisions cannot be affected by the proposed amendments, except insofar as the minimum grade standards are concerned.

The proposed revised minimum grade standards for the receipt and disposition of prunes have already been made a part of this regulation by a supplementary order which was issued (18 F R. 4495) effective August 1, 1953. This action was taken after it became obvious that a formal amendment of the order could not be made effective by that time, and to insure that such minimum grade standards would be in effect for the entire crop year. Thus, the operations under § 993.50 for this crop year will be pursuant to such revised minimum grade standards.

The other exceptions to the routine amendments relate to the proposals to "tighten" the existing comparable size requirements with respect to certain surplus prunes and to require that defective prunes which are excessively affected by the defects of mold, imbedded dirt, insect infestation, and decay be disposed or for other than human consumption. These provisions could not be applicable in an above parity situation, such as is estimated will exist this crop year.

On the other hand, it is probable that the above provisions will be needed in some succeeding crop years when the estimated seasonal average price will be below parity. They should be available for use in such situations, in that they would tend to effectuate the declared policy of the act. It is, therefore, concluded that the amendments recommended herein be put into effect promptly in case the inclusion of them is approved.

(16) The first five sentences of § 993.28 (a) (1) should be amended by deleting the existing provisions and substituting the following: "Prior to March 1 of each election year, the committee shall cause to be held, in each of the seven election districts which are described below in this subparagraph, a meeting for the purpose of obtaining names of proposed candidates for nomination to the Secretary for selection as members and alternate members for the respective districts. Each such candidate must be a producer in the district for which he is proposed.

Prior to March 15 of that election year, the committee shall prepare for each district and mail to each producer of record in that district who is not a member of a cooperative marketing association a ballot containing the names of such proposed candidates for that district, and the ballot shall also contain blank spaces for use by the voters in writing in the names of any other eligible producers for whom they may wish to vote in lieu of any of those listed. However, the committee may, if it should deem such action to be desirable, use such a ballot for two or more districts jointly: *Provided,* That the returns shall be considered in the light of the voting by each district separately, and subject to the terms and conditions specified herein which are applicable to voting in the individual districts. Each voter shall be entitled to cast only one vote for a member nominee and only one vote for an alternate member nominee in a district in which he is a producer, and no voter shall vote for candidates in more than one district. In case he is a producer in more than one district, he shall elect in which of such districts he will vote and notify the committee as to his choice. In order to be counted, such a mail ballot must be executed and returned to the committee postmarked not later than the following March 31. One nominee for member and one nominee for alternate member for each district shall be submitted to the Secretary by the committee on the basis of those receiving the plurality of the mail ballots cast for the respective positions in the particular district."

Under the existing provisions, the nominations for these positions for each district are required to be submitted to the Secretary on the basis of the majority votes cast for those respective positions at a meeting caused by the committee to be held in such district prior to March 31 of the election year. This method has not operated satisfactorily. Ordinarily, only a comparatively small percentage of the eligible producers in a district have attended these meetings, and this has resulted in the submission of nominations which represent the known choices of only a small segment of the eligible voters. It appears that many producers who would like to attend have been unable to do so because of pressure of other business. Also, some producers are inclined to stay away because of personal arguments which have arisen previously in connection with the choices of the candidates. The adoption of a method which would tend to insure the participation in the balloting of the largest percentage of the eligible producers practicable would be desirable. On the other hand, the holding of meetings of this general nature should not be discontinued. They have served, and should continue to serve, a very useful purpose in affording opportunities for acquainting the producers with various aspects of the program, and in providing a forum for the expressions of their views with respect to the operation of the program and possible ways by which its effectiveness might be improved. Last, but not least, the meetings should afford excellent opportunities for determining the most likely candidates for the positions.

It is concluded that these meetings should hereafter serve for the making of proposals for nominations, but that every eligible voter should later be given an adequate opportunity to express his preference as between the several candidates, or, if he believes that some other eligible producer should be selected, to cast his vote for such other person. It seems clear that this can best be done by way of a mail ballot listing the names of each eligible candidate who has been so proposed, and containing blank spaces for the insertion by the particular voter of the names of other eligible candidates, if he should choose to do so.

The present requirement that these nominees be determined by, or shortly after, March 31 should be retained because it affords the Secretary an adequate time to make his selections by the required date. It follows, of course, that the adoption of this new procedure will necessitate the holding of these meetings earlier in the crop year. The committee will need extra time for preparing the ballots, mailing them to the voters, receiving the executed ballots, and tabulating the returns. It was contended at the hearing that at least a month would be needed for these purposes, and this seems reasonable.

There was some discussion at the hearing to the effect that, insofar as is reasonably practicable, the vote of each individual should be treated as being confidential. However, it was agreed that the nature of the situation would be such that it would be inevitable that the way in which some persons voted would become known. Accordingly, it was recommended that such a prohibition should not be set forth in the order. It is agreed that every reasonable effort should be made to prevent the disclosure of such information to the public.

(17) There was set forth in the notice of hearing, and argued at the hearing, a proposal which had been submitted by certain independent handlers (i. e., handlers other than the cooperative marketing association of producers) that § 993.28 (b) should be amended so as to make a fixed apportionment of the total handler membership on the committee of seven as follows: (a) Two to the cooperative marketing association of producers; (b) two to the group of independent handlers each of whom handled during the preceding crop year, as the first handler, 17 percent, or more, of the total tonnage handled by all independent handlers, as the first handlers, during said crop year; (c) two to the group of independent handlers each of whom handled during the preceding crop year, as the first handler, less than eight percent of the total tonnage handled by all independent handlers, as the first handlers, during said crop year; and (d) one to the group of independent handlers each of whom handled during the preceding crop year, as the first handler, more than eight percent but less than 17 percent of the total tonnage handled by all independent handlers, as the first handlers, during the said crop year. It is concluded, for reasons which are set forth below, that this proposal should be denied and that the existing order provisions on the matter should be continued in effect.

Since the order first became effective in 1949, the division of handler representation on the committee has been on the basis of the relative volumes of the tonnages which were handled, as the first handlers during the then preceding base period of the cooperative on the one hand and the independents on the other hand. It was mutually agreed by both segments that this method of apportionment was fair and equitable in that it provided each with a voice in the committee's deliberations which was in accordance with its comparative volume of dealing in prunes and it provided for changes in representations in accordance with any changes in comparative volumes of dealing as between them.

Originally, the order left the independents free to select the representatives apportioned to that segment on the basis of a meeting of all such independents, at which each such handler was allowed one vote for each representative to be nominated and the selections of each such nominee was required to be made on the basis of a majority vote of those present and voting. However, at the amendment hearing which was held in March 1951, there was considered an amendment of those provisions which had been proposed by such independents. Up to that time, the handler representation on the committee had been, by reason of the application of the comparative tonnage basis handled method, apportioned by alloting five member positions to the independents and the remaining two member positions to the cooperative. It was proposed by the independents that, for the purpose of their selection of the nominees to represent them on the committee, the order should group them into three classes, namely, large (those handling individually 17 percent, or more, of the total independent handler tonnage) medium (those handling individually 8 percent, or more, but less than 17 percent of the total independent handler tonnage) and small (those handling individually less than 8 percent of the total independent handler tonnage), that the Secretary should, insofar as possible, apportion 40 percent of the independent handler representatives to the large class, 20 percent to the medium class, and the remaining 40 percent to the small class; but, in any event, at least one member position should be assigned to each such class. It was contemplated that, on the basis of the then current independent handler representation of five, the adoption of this proposal would result in the following "breakdown": (a) Large independent handlers—two; (b) medium independent handlers—one; and (c) small independent handlers—two.

It was argued by the then proponents of the above proposal that the application of the original method had proved to be unsatisfactory from the standpoint that one of the three recognized classes of independent handlers (namely, the medium class) had been denied any rep-

resentation on the committee by reason of the fact that they were few in number and they had been outvoted in the nomination meeting by the independent handlers in the other two classes. It was stressed that equity and fairness demanded that each class, as determined by comparative volumes of tonnages handled, should be given adequate representation. Except for the base period, no proposal was made in 1951 for any change in the existing comparative tonnage basis method of allocation of representation as between the cooperative and the independent handlers. To the contrary, it was argued that this same basis, with appropriate modifications should also be applied in dividing the independent handler representation among the several classes in that segment. This proposal was approved by the Secretary and incorporated into the order.

Insofar as the apportionment of the determined handler representation on an administrative agency of this nature is concerned, it is the established custom of this Department to make apportionment of it among the different segments of handlers on whatever basis is mutually satisfactory and agreeable to them. It is believed that such a matter is properly one for settlement among them, rather than for arbitration by the Secretary. As indicated above, this policy was followed originally in connection with the present order. However, the instant proposal requires that the Secretary decide which of the two methods of such apportionment should be followed in the future, namely the present provisions, as contended for by the cooperative, or the instant proposal, as contended for by some of the independent handlers. In the circumstances, it seems reasonable to take the position that the present provisions should not be changed in the absence of a reasonably clear showing that they have produced an unfair or unjust result.

The crux of the argument for the instant proposal seems to hinge on the fact that the application of the comparative tonnages handled method finally resulted, beginning just prior to the 1952–53 crop year, with an increase of the cooperative handler representation from two to three and a corresponding decrease of the independent handler representation from five to four. This loss in the independent handler representation was suffered by the large class, in that its representation was reduced from two to one. The net effect of the instant proposal would be to restore the representation to what it had been prior to the 1952–53 crop year.

It was contended that the aforementioned change "does not entirely broaden the handler representation insofar as benefiting the industry with additional facts and knowledge of all handlers" is concerned, but "it merely gives them (i. e., the cooperative) another vote." The fact is that all segments and classes of handlers were represented on the committee after the change the same as was the case before the change. It is true that the representation of the large handler class of independents was reduced by one, but such class still had available a representative on the committee for expressing its views. The increase in the cooperative representation gave due recognition to the increased amount of tonnage handled by it. While this is important from the standpoint of voting in committee deliberations, it does not appear that such a happening was unfair in that it reflected the actual changes in comparative tonnages of handlings.

Considerable point was also made of the fact that, in addition to its three handler member positions on the committee, the cooperative also has five of the 14 producer member positions on the committee, making a total representation for it of eight. In answer to questions as to why it was believed that this representation is inequitable in the light of the fact that the combined independent handler and independent producer representation is 13, it was stated that the cooperative representatives generally vote the same in committee deliberations, while the reverse is often true with respect to the independent handlers and growers. Such a situation is obviously not one for which the cooperative is responsible, and it should not be penalized because it exists. In any event, it is difficult to perceive how, if it exists to anything like the extent claimed, it could be affected by decreasing the cooperative handler representation by one and adding it to the independent handler representation.

It was also mentioned that a fixed, and rigid, apportionment of handler representation as between cooperative and independent handlers had been approved in connection with other programs of this nature. There was cited specifically in this connection the marketing agreement and order regulating the handling of raisins produced from raisin variety grapes grown in California. That regulation (see 7 CFR, 1952 Rev., § 989.39) specifies that, of the four packer representatives, one shall represent the cooperative, and the remaining three shall be allocated to the independents by assigning one to each of three specified size classes in that segment. However, such an apportionment of handler representation in connection with raisins was the one which was proposed by both segments at the promulgation hearing as representing their joint view as to the way in which the allocation should be made in the light of all the facts and circumstances. The present denial action is not predicated on the premise that a fixed, or rigid, apportionment should not be approved in any event, but it is based on the premise that a method of apportionment which was adopted as being the joint wishes of all segments of handlers should not be changed contrary to the wishes of one segment in the absence of a clear showing that it has operated unfairly and inequitably.

One of the most important functions which the committee is called upon to perform is with respect to the operation of the surplus pool. It was testified without contradiction that the cooperative handles about 38 percent of the total volume of prunes which are now being handled. By reason of its composition as an organization of producers, it has a direct interest in the surplus pool to that same extent. On the other hand, the proponents agreed that this is not true with respect to independent handlers, except in the relatively few instances where they acquire independent producers interests in such pool. It seems reasonable to take the position that the present votes of those who are directly interested in that pool should not be reduced and given to the segment which has no significant interest in the net proceeds therefrom. As matters now stand, the independent handlers still are in a position to predominate, by four to three, in any handler voting in that connection. It certainly could not be argued, on any reasonable basis, that any reduction should be made in the number of producer votes, either cooperative or independent, which are permitted to be cast in that connection.

The present method of allocating the number of handler votes between the cooperative handler and the independent handlers is basically the same as the present method of allocating the producer votes between cooperative producers and independent producers. Such method gives each a voice in the management which is in direct ratio to its relative volume of the prunes which are handled. Further, it affords an automatic adjustment for changes in this ratio which may occur from year to year. While, because of its growth, the cooperative handler gained a member position, it is possible that the reverse may be true in the future. The fact that such a gain has been made constitutes no reason for depriving it of that benefit in the absence of a showing that the result is clearly unfair and inequitable. As indicated above, it is not believed that such a showing has been made.

(18) It was testified at the hearing that changes should also be made in any provisions of the order not directly involved in connection with specific amendments of it which may result from this proceeding, but which are necessary to make such other provisions conform with any such specific amendments which are so adopted. It was emphasized that any such changes should be limited strictly to those which are obviously necessary and appropriate, and that, other than to that extent, such changes should not affect the present meaning of such provisions. Some relatively minor provisions in other parts of the order not covered in the notice of hearing which would be affected by such specific amendments may have been overlooked in the preparation of the hearing notice and at the hearing, and, if it should be found that minor conforming changes should be made in them, there should be authority to make such changes. It does not appear necessary to make any conforming changes of significance.

(19) Testimony was presented at the hearing by a representative of a group of prune handlers other than the cooperative marketing association to the effect that the existing order should be terminated. In reply to a question as to intent, this witness stated that it was the desire of the handlers in question that his testi-

mony be considered and acted upon by the Secretary as a petition for termination of the existing program. It was ruled by the Presiding Officer that, while such handlers were at liberty to submit to the Secretary such a petition separate and apart from this proceeding, it was not appropriate for consideration in connection with these amendment proceedings. The ruling of the Presiding Officer in this connection is hereby ratified and confirmed. Such a petition is obviously not a proper one for consideration and action in connection with a proceeding of this nature, but such proceeding must be confined to possible amendments of the existing provisions of the regulation. Aside from this technical aspect, termination action is not desired by a majority of the prune producers. In confirmation of this conclusion, a referendum was held in May 1953 for the purpose of determining whether they favored such action. Of the votes cast in that referendum, the continuance of this program was favored by approximately 93 percent of the number of producers who voted, which producers produced approximately 84 percent of the volume of the production which was represented in the voting. The results of this referendum were published in the FEDERAL REGISTER issue of June 24, 1953 (18 F. R. 3620) in which document it was concluded that this program should be continued in effect.

Rulings on proposed findings and conclusions. At the time of the hearing, the Presiding Officer set "on or about May 1, 1953" as the time by which briefs from interested parties with respect to testimony presented in evidence at the hearing and the conclusions to be drawn therefrom must be received by Hearing Clerk of the Department. A brief was filed by R. W Jewell for the Prune Administrative Committee and other briefs were filed by handlers of prunes including Burrel Leonard for John Leonard, R. L. Engell for the California Packing Corporation, P S. Schneider for Warren Dried Fruit Co., Inc., Chris Zobel for Rosenberg Bros. and Co., Inc., and S. R. Abinante for Abinante and Nola Packing Co., Inc. Those briefs contained proposed findings of facts, conclusions, or arguments with respect to proposals discussed at the hearing. Every point covered in such briefs was considered carefully along with the testimony in the record in making the findings and reaching the conclusions set forth above. To the extent that the suggested findings and conclusions contained in those briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings, or to reach such conclusions, is denied on the basis of the facts found and stated in connection with this decision.

General findings. (a) The findings hereinafter set forth are supplementary and in addition to the findings and determinations which were made in connection with the original issuance (14 F. R. 5254) of this marketing agreement and order, as supplemented by the findings and determinations which were made in connection with the issuance (16 F. R. 8437) of the amendment of such marketing agreement and order which was issued on August 17, 1951, and all of said previous findings and determinations, except the finding as to the base period for the parity computation, are hereby ratified and confirmed except insofar as such findings and determinations may be in conflict with the findings set forth herein;

(b) The marketing agreement and order, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(c) The marketing agreement and order, as hereby proposed to be further amended, will be applicable only to persons in the respective classes of industrial and commercial activities specified or necessarily included, in the proposals upon which the amendment hearing has been held; and

(d) There are no differences in the production and marketing of dried prunes in the production area covered by this marketing agreement and order, as hereby proposed to be further amended, which make necessary different terms applicable to different parts of such area.

Recommended further amendment of the amended marketing agreement and order The following proposed further amendment of the amended marketing agreement and order[1] is recommended as the detailed means by which the aforesaid conclusions may be carried out:

DEFINITIONS

§ 993.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to exercise the powers and to perform the duties of the Secretary under the act.

§ 993.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.)

§ 993.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 993.4 *Prunes.* "Prunes" means and includes all sun-dried or artificially dehydrated plums, of any type or variety, produced from plums grown in the State of California, except: (a) Sulfur-bleached prunes which are produced from yellow varieties of plums and are commonly known as silver prunes; (b) plums which have not been dried or dehydrated to a point where they are capable of being stored prior to packaging, without deterioration or spoilage, unless refrigeration or other artificial means of preservation are used, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as "high moisture content prunes," but this exception shall not apply if and when such plums are dried to the point where they are capable of being stored, without deterioration or spoilage, unrefrigerated or not otherwise artificially preserved; and (c) prunes as used in § 993.62.

§ 993.5 *Natural condition prunes.* "Natural condition prunes" means prunes which have not been processed.

§ 993.6 *Processed prunes.* "Processed prunes" means prunes which have been cleaned, or treated with water or steam: *Provided,* That prunes shall not become processed prunes at the time they are cleaned by a producer or a dehydrator in the course of preparing them for delivery to a producer, dehydrator, or handler.

§ 993.7 *Standard prunes.* "Standard prunes" means any lot of natural condition prunes meeting the applicable grade and size standards prescribed pursuant to § 993.48.

§ 993.8 *Standard processed prunes.* "Standard processed prunes" means any lot of processed prunes meeting the applicable grade and size standards prescribed pursuant to § 993.49.

§ 993.9 *Substandard prunes.* "Substandard prunes" means any lot of processed or natural condition prunes failing to meet the applicable grade and size standards prescribed pursuant to §§ 993.48 and 993.49.

§ 993.10 *Handle.* "Handle" means to receive, process, package, sell, consign, transport, or ship or in any other way to place prunes in the current of commerce (except as a carrier of prunes owned by another person) whatever may be the ultimate destination or end use of the prunes: *Provided,* That this term shall not include: (a) The selling or delivering of prunes by a producer or dehydrator to a producer, dehydrator, or handler within the State of California; (b) the receiving of prunes by a producer or dehydrator from a producer or dehydrator; and (c) the buying, receiving, selling, or otherwise dealing by a person with prunes which have already been handled within the meaning of this definition by another person, but this exclusion shall be of no effect for the purpose of applying the applicable restrictions of § 993.49 or § 993.50 to the subsequent handling of prunes in the event a handler's prunes are excepted from restrictions in the manner specified in § 993.49 (e) (1) or § 993.50 (c).

§ 993.11 *Handler.* "Handler" means any person who handles prunes.

§ 993.12 *Dehydrator.* "Dehydrator" means any person who produces prunes by drying or dehydrating plums by means of sun-drying or artificial heat.

§ 993.13 *Producer.* "Producer" means any person who is engaged, in a proprietary capacity, in growing plums for drying or dehydrating into prunes.

§ 993.14 *Ton.* "Ton" means a short ton of 2,000 pounds.

[1] The provisions identified with an asterisk (*) apply only to the proposed further amendment of the amended marketing agreement and not to the proposed further amendment of the amended order.

§ 993.15 *Grade.* "Grade" means the classification of prunes for quality and condition according to the grading specifications established pursuant to the provisions of this subpart.

§ 993.16 *Size.* "Size" means the number of prunes contained in a pound or the classification of prunes into their various count groups in accordance with the usual practice of the industry.

§ 993.17 *Crop year* "Crop year" means the 12-month period beginning August 1 of any year and ending July 31 of the following year.

§ 993.18 *Domestic.* "Domestic" means the continental United States, Alaska, Canal Zone, Hawaii, Puerto Rico, Virgin Islands, and Canada.

§ 993.19 *Proper storage.* "Proper storage" means storage of such character as will maintain prunes in the same condition as when received by the handler, except for normal and natural deterioration and shrinkage.

§ 993.20 *Part and subpart.* "Part" means the order regulating the handling of dried prunes produced in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of dried prunes produced in California shall be a "subpart" of such part.

PRUNE ADMINISTRATIVE COMMITTEE

§ 993.24 *Establishment of Prune Administrative Committee.* A Prune Administrative Committee (hereinafter referred to as the "committee") consisting of 21 members, with an alternate member for each such member, is hereby established to administer the terms and provisions of this part, of whom, with their respective alternates, 14 shall represent producers and 7 shall represent handlers.

§ 993.25 *Term of office.* The term of office of members, and their respective alternates, shall be two years, ending on May 31 of even numbered years, and any later date which may be necessary for the selection and qualification of their respective successors.

§ 993.26 *Selection.* Selection of members of the committee, and their respective alternates, shall be made by the Secretary, for the producer and handler groups from the nominations submitted for that purpose by the respective groups except as otherwise provided in § 993.32, or from among other qualified persons, in the discretion of the Secretary, but such selections shall be made by the Secretary from the classes within each group and in the proportions set forth in § 993.28.

§ 993.27 *Eligibility.* Each producer member and alternate member of the committee selected to represent a district described in § 993.28 (a) (1) shall be, at the time of his selection and during his term of office, a producer in the district for which he is selected, and shall not be engaged in the handling of prunes, either in a proprietary capacity or as a director, officer, or employee. Each producer member and alternate member of the committee selected to represent producers-at-large in the manner contemplated in §§ 993.26 and 993.28 (a) (3) may be, at the time of his selection and during his term of office, a producer in any district, but he shall not be engaged in the handling of prunes, either in a proprietary capacity or as a director, officer, or employee. Each handler member and alternate member of the committee shall be either a handler of prunes, or an employee, or agent of a handler of prunes, actually engaged in the handling of prunes while he is such member or alternate member.

§ 993.28 *Nominees* — (a) *Producer nominees*—(1) *Independent producers.* Prior to March 1 of each election year, the committee shall cause to be held, in each of the seven election districts which are described below in this subparagraph, a meeting for the purpose of obtaining names of proposed candidates for nomination to the Secretary for selection as members and alternate members for the respective districts. Each such candidate must be a producer in the district for which he is proposed. Prior to March 15 of that election year, the committee shall prepare for each district and mail to each producer of record in that district who is not a member of a cooperative marketing association a ballot containing the names of such proposed candidates for that district, and the ballot shall also contain blank spaces for use by the voters in writing in the names of any other eligible producers for whom they may wish to vote in lieu of any of those listed. However, the committee may, if it should deem such action to be desirable, use such a ballot for two or more districts jointly. *Provided,* That the returns shall be considered in the light of the voting by each district separately, and subject to the terms and conditions specified herein which are applicable to voting in the individual districts. Each voter shall be entitled to cast only one vote for a member nominee and only one vote for an alternate member nominee in a district in which he is a producer, and no voter shall vote for candidates in more than one district. In case he is a producer in more than one district, he shall elect in which of such districts he will vote and notify the committee as to his choice. In order to be counted, such a mail ballot must be executed and returned to the committee postmarked not later than the following March 31. One nominee for member and one nominee for alternate member for each district shall be submitted to the Secretary by the committee on the basis of those receiving the plurality of the mail ballots cast for the respective positions in the particular district. The seven districts which are referred to above are described as follows:

District No. 1. The counties of Modoc, Lassen, Plumas, Sierra, Butte, Sutter, Yuba, Nevada, and Placer.

District No. 2. The counties of Napa and Solano.

District No. 3. The counties of Mendocino, Lake, Sonoma, Marin, Del Norte, and Humboldt.

District No. 4. The counties of San Francisco, San Mateo, and Santa Cruz, and all that portion of the territory in Santa Clara west of a line described as follows: Beginning at the intersection of Alviso Road and San Francisco Bay in Alviso; thence south via Alviso Road to First Street in San Jose; thence south on said First Street to San Carlos Street in San Jose; thence west on San Carlos Street to Meridian Road; thence south on Meridian Road to Dry Creek Road; thence west on Dry Creek Road to the San Jose-Los Gatos Highway; thence southwesterly on the San Jose-Los Gatos Highway to Union Avenue, also known as Ware Avenue; thence south on Union Avenue, also known as Ware Avenue, along a straight line continuing to the Santa Cruz County line.

District No. 5. All of Alameda County and that part of Santa Clara County east and south of District No. 4, extending in a southerly direction to a straight line extending from along the main portion of the Cochran Road, northeasterly to the Stanislaus County line and southwesterly to the Santa Cruz County line.

District No. 6. The counties of San Benito, Monterey, and San Luis Obispo, and all of that portion of Santa Clara County not included in Districts No. 4 and No. 5.

District No. 7. All of the counties in the State of California not included in Districts No. 1 to No. 6, inclusive.

At any time the Secretary concludes that the respective areas covered by the aforementioned seven districts, as delineated above, no longer represent approximately equal segments from the standpoints of numbers of producers of prunes or productions of prune tonnages, he may change such areas with a view to reestablishing such equalization on the basis of the existing situations.

(2) *Cooperative producers.* Prior to March 1 of each election year, the committee shall report to the Secretary the total tonnage of prunes handled by all handlers as the first handlers thereof and the total tonnage of prunes handled by cooperative marketing associations as the first handlers thereof during the crop year preceding such election year. Prior to March 15 of each election year, the Secretary shall determine and announce the number of producer member nominees and producer alternate member nominees which shall be nominated by cooperative marketing associations handling prunes on behalf of their members. Such number of nominees shall bear, as far as practicable, the same percentage compared to the total of 14 producer members and their alternates as the prune tonnage handled by cooperative marketing associations as the first handlers thereof bears to the total tonnage handled by all handlers as the first handlers thereof during the crop year preceding such election year. Prior to March 31 of each election year the cooperative marketing associations handling prunes shall nominate to the Secretary on behalf of their members such number of producer nominees and their respective alternates.

(3) *Producers-at-large.* The number of nominees and their respective alternates then required to make up the total of 14 producer member nominees and their alternates shall be nominated to the Secretary by the seven independent producer nominees nominated for members on the committee pursuant to the provisions of this section. Such nominations shall be made prior to April 15 and shall be by majority vote.

(b) *Handler nominees.* Prior to March 15 of each election year, the Secretary shall determine and announce the number of handler member nominees and handler alternate member nominees which shall be nominated by cooperative marketing associations handling plunes, on the same basis as his determination of the number of cooperative producer nominees, as set forth in paragraph (a) (2) of this section, and at the same time he shall determine and announce, for those handlers who are not cooperative marketing associations (referred to in this subpart as "independent handlers") the number of handler member nominees and handler alternate member nominees to be nominated by large handlers, the number to be nominated by medium handlers, and the number to be nominated by small handlers. Large handlers shall be deemed to be those who during the preceding crop year individually handled as the first handlers thereof, 17 or more percent of the total tonnage handled by independent handlers as the first handlers hereof; medium handlers, those who during the preceding crop year individually handled as the first handlers thereof, eight or more percent but less than 17 percent of the total tonnage handled by independent handlers as the first handlers thereof; and small handlers, those who during the preceding crop year individually handled as the first handlers thereof, less than eight percent of the total tonnage handled by independent handlers as the first handlers thereof. The Secretary shall, in his discretion and insofar as it is possible to do so, apportion 40 percent of the independent handler nominees to large handlers, 20 percent of the independent handler nominees to medium handlers, and 40 percent of the independent handler nominees to small handlers, but in the event that these proportions cannot be followed, there shall be at least one independent handler member nominee and handled alternate member nominee apportioned to each of the three classes of independent handlers, and the nominees for any remaining member positions, including the respective alternates, shall be apportioned to the size class or classes as determined at a general meeting of indepenment handlers which shall be called for that purpose by the committee, such determination to be made on the basis of a majority vote of all independent handlers who are present at such meeting and participate in the voting, and on the further basis of one vote for each such handler in each balloting. Prior to March 31 of each election year, the cooperative marketing associations handling prunes shall nominate to the Secretary such number of handler member nominees and their respective alternates as the Secretary has determined and announced for cooperative marketing associations. Prior to March 31, at a meeting called for that purpose by the committee, each class of independent handlers shall nominate the number of handler member nominees and their respective alternates as determined and announced by the Secretary for each class, respectively. At such meeting, nominations shall be made by each class of independent handlers for nominees of that class, on the basis of a majority vote of all handler members of that class present and participating in the voting and on the further basis of one vote for each handler in each class in each balloting for nominees of that class.

§ 993.29 *Alternates.* An alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

§ 993.30 *Failure to nominate.* In the event nominations for any positions on the committee are not received within the prescribed periods, the Secretary may select such members or their alternates, without regard to nominations, but each such selection shall be on the bases prescribed in § 993.28.

§ 993.31 *Acceptance.* Each person selected as a member or alternate member of the committee shall, prior to serving on the committee, qualify by filing with the Secretary a written acceptance within 15 days after receiving notice of his selection.

§ 993.32 *Vacancies.* In the event of any vacancy occasioned by the failure of any person selected as a member or alternate member of the committee to qualify, or, by the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated within 60 calendar days after such vacancy occurs. Such nomination shall be made in the manner provided for in this subpart, insofar as applicable, except that nominations for independent producer member and alternate member positions may, at the discretion of the committee, be made to the committee by the incumbents of the remaining independent producer member positions.

§ 993.33 *Obligations.* Upon the removal, resignation, disqualification, or expiration of the term of office of any member or alternate member of the committee, such member or alternate member shall account for all receipts and disbursements and deliver to his successor, to the committee, or to a designee of the Secretary all property (including, but not limited to, all books and records) in his possession or under his control as member or alternate member, and he shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designee full title to such property and funds, and all claims vested in such member or alternate member. Upon the death of any member or alternate member of the committee, full title to such property, funds, and claims vested in such member or alternate member shall be vested in his successor or, until such successor has been selected and has qualified, in the committee.

§ 993.34 *Voting procedure and verbatim record.* Except as specifically otherwise provided in this section, all decisions of the committee shall be by majority vote of the members present and voting and a quorum must be present. A quorum shall consist of at least 12 members of whom at least eight must be producer members and at least four must be handler members. Except in case of emergency, a minimum of five days' advance notice must be given with respect to any meeting of the committee. In case of an emergency, to be determined within the discretion of the chairman of the committee, as much advance notice of a meeting as is practicable in the circumstances shall be given. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When any proposition is submitted for voting by such method, one dissenting vote shall prevent its adoption. Any recommendation submitted to the Secretary by the committee, pursuant to the requirements of §§ 993.41 through 993.45, §§ 993.48 through 993.50, or §§ 993.59 through 993.63, shall be on the basis of an affirmative vote by at least 75 percent of the members present (in case of fractional numbers, expressed in terms of the next highest whole number) *Provided,* That, at least 11 members vote affirmatively on any such recommendation. The committee shall file with the Secretary, along with recommendations submitted to the Secretary pursuant to the requirements of §§ 993.41 through 993.45, §§ 993.48 through 993.50, or §§ 993.59 through 993.61, a verbatim record of those portions of its meetings relative to such requirements. Whenever the committee votes on any matter involving a recommendation or proposal to the Secretary, it shall report promptly to the Secretary the individual votes cast in connection therewith, and, in addition, the committee shall report to the Secretary the individual votes cast in connection with any other matter on which there is a roll call.

§ 993.35 *Compensation and expenses.* The members of the committee, and their alternates when acting as members, shall receive $10.00 per day for each day devoted to performing their duties hereunder, plus their reasonably necessary expenses.

§ 993.36 *Powers.* The committee shall have the following powers:

(a) To administer the terms and provisions of this subpart;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 993.37 *Duties.* The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, dehydrator, or handler;

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall

be subject to examination by the Secretary at any time;

(c) To make, subject to the prior approval of the Secretary, scientific and other studies, and assemble data on the producing, handling, shipping, and marketing conditions relative to prunes, which are necessary in connection with the performance of its official duties;

(d) To select, from among its members, a chairman and other appropriate officers, and to adopt such rules and regulations for the conduct of the business of the committee as it may deem advisable;

(e) To appoint or employ such other persons as it may deem necessary, and to determine the salaries and define the duties of such persons;

(f) To submit to the Secretary not later than the fourth Tuesday of July of each year, a budget of its anticipated expenditures and the recommended rate of assessment for the ensuing crop year, and the supporting data therefor;

(g) To submit to the Secretary such available information with respect to prunes as the committee may deem appropriate, or as the Secretary may request;

(h) To prepare and submit to the Secretary monthly statements of the financial operations of the committee, exclusive of surplus tonnage operations, and to make such statements, together with the minutes of the meetings of said committee, available for inspection at the offices of the committee, by producers, dehydrators, and handlers;

(i) To prepare and submit to the Secretary annually as soon as practicable after the end of each crop year and at such other times as the committee may deem appropriate or the Secretary may request, a statement of the financial operations of the committee with respect to the surplus tonnage for such crop year and to make such statement available at the offices of the committee, for inspection by producers, dehydrators, and handlers;

(j) To cause the books of the committee to be audited by a certified public accountant at least once each crop year, and at such other times as the committee may deem necessary or as the Secretary may request. Such report shall show, among other things, the receipt and expenditures of funds. At least two copies of such audit report shall be submitted to the Secretary; a copy of each such report shall be available, at the offices of the committee, for inspection by producers, dehydrators, and handlers;

(k) To give the Secretary the same notice of meetings of the committee as is given to the members of the committee;

(l) To give producers, dehydrators, and handlers reasonable advance notice of meetings of the committee, and to maintain all such meetings open to such persons;

(m) To investigate compliance with the provisions of this subpart and with any rules and regulations established pursuant to such provisions; and

(n) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the act and the efficient administration of this subpart.

MARKETING POLICY

§ 993.41 *Report of marketing policy.* Prior to the beginning of each crop year, the committee shall prepare and submit to the Secretary a report setting forth its marketing policy for the regulation of the handling of prunes in such crop year, pursuant to §§ 993.48 through 993.63. Such report shall include the data and information used by the committee in the formulation of such marketing policy. In developing the marketing policy, the committee shall give consideration to the following factors:

(a) The estimated tonnage of prunes from preceding crop years held by handlers;

(b) The estimated tonnage of prunes from preceding crop years held by producers and dehydrators;

(c) The estimated production of prunes in such crop year;

(d) An appraisal of the quality and size of prunes of the crop to be produced in such crop year;

(e) The estimated tonnage of prunes marketed in recent crop years in domestic commerce, segregated by uses;

(f) The estimated tonnage of prunes marketed in recent crop years in foreign commerce, segregated by countries or groups of countries in such a way as to indicate the variables, if any, in the tonnages marketed in each such country or groups of countries under different pricing conditions;

(g) The current prices being received for prunes by producers, dehydrators, and handlers;

(h) The trend and level of consumer income;

(i) The estimated probable market requirements for prunes in such crop year in domestic commerce, segregated by uses;

(j) The estimated probable market requirements for prunes in such crop year in foreign commerce, segregated by countries or groups of countries in such a way as to reflect the apparent variables, if any, in such requirements under different pricing conditions;

(k) Such factors, in supplying foreign commerce, as may tend to directly affect, burden, and obstruct the normal channels of domestic commerce;

(l) Such other factors as may have a bearing on the marketing of prunes; and

(m) In the event that the committee contemplates that it will recommend to the Secretary that the salable and surplus percentages for a particular crop year should be established pursuant to the provisions of § 993.59 (b), it shall also consider, formulate, and include in its marketing policy its recommendations as to terms and conditions, including pricing formulae, for the sale of surplus tonnage that may be disposed of pursuant to the provisions of § 993.63 (b) (2) and a compensating payment calculated to move the desired quantity of prunes in export in accordance with said § 993.63 (b) (2).

§ 993.42 *Policy meeting.* The committee shall hold its initial policy meeting for the purpose of formulating and adopting the marketing policy for any crop year not later than the third Tuesday in June preceding the beginning of such crop year. It shall hold another meeting in this connection not later than the following July 12 (except that, if such date should fall on a legal holiday, a Saturday, or a Sunday, not later than the following work day) for the purpose of reconsidering its original marketing policy for the ensuing crop year, including the consideration of the Secretary's tentative views in respect thereto, submitted pursuant to § 993.43. The committee shall submit to the Secretary, as promptly as practicable after the conclusion of this second policy meeting, a report showing any revisions or changes it desires to make in its marketing policy for the ensuing crop year as formulated at its first meeting, together with the supporting data and reasons therefor. In the event the committee has recommended that the salable and surplus percentages for the ensuing crop year should be established pursuant to the provisions of § 993.59 (b) the Secretary shall have the right to disapprove any terms and conditions, including pricing formulae and compensating payment, submitted by the committee pursuant to the provisions of § 993.41 (m) within seven calendar days after he receives in Washington, D. C., the committee's policy report developed at said second marketing policy meeting.

§ 993.43 *Time of submission and Secretary's tentative views.* The original marketing policy report, together with any committee recommendation pursuant to § 993.41 (m) for any crop year shall be submitted to the Secretary within ten days after the policy meeting specified in § 993.42. The Secretary shall notify the committee of his tentative views in respect to the committee's marketing policy as soon as reasonably practicable after he receives the report thereon.

§ 993.44 *Subsequent modifications or changes.* In the event the committee subsequently determines that the marketing policy developed pursuant to § 993.42 should be modified or changed by reason of changes in economic or other conditions, it shall make such modification or change in the manner provided for above for the original formulation of a marketing policy, insofar as applicable, and shall submit promptly a report of such modified or changed marketing policy to the Secretary, along with the data which it considered in connection with the making of such modification or change: *Provided,* That, in case the salable and surplus percentages for the particular crop year were established pursuant to the provisions of § 993.59 (b), the Secretary shall notify the committee promptly of his views in regard to such modifications or changes, including any disapproval thereof.

§ 993.45 *Notice.* The committee shall promptly give reasonable publicity to producers, dehydrators, and handlers of the contents of each marketing policy report submitted to the Secretary and

of each report modifying or changing a marketing policy. Such publicity may be given through newspapers having general circulation in the area or through other channels, but the committee may use any or all of such media. Copies of all such reports shall be maintained in the offices of the committee where they shall be available for examination by producers, dehydrators, and handlers.

GRADE AND SIZE REGULATIONS

§ 993.48 *Receiving of natural condition prunes by handlers*—(a) *General.* In order to effectuate the declared policy of the act, no handler shall receive prunes from producers or dehydrators, except in accordance with the terms and conditions with respect to grades and sizes set forth in this section: *Provided,* That no handler shall receive any prunes (either as standard prunes or as substandard prunes) from producers or dehydrators, unless such prunes have been properly dried and cured in original natural condition, without the addition of water, and free from active insect infestation, so that they are capable of being received, stored, and packed without deterioration or spoilage. Any high moisture content prunes, as described in the exception in § 993.4 (b) in the possession of a handler, shall be held separate and apart from any surplus prunes (including both standard and substandard prunes) held by him. If, and so long as, a handler commingles his salable prunes with any surplus prunes, this prohibition as to storage shall apply to the entire mass. In the event such high moisture content prunes are dried or dehydrated to a point where they are capable of being stored, without deterioration or spoilage, unrefrigerated or not otherwise artificially preserved, they shall be deemed, at that time, to have been received by such handler as prunes, and to be subject to all of the conditions and restrictions of this subpart.

(b) *Regulation.* Continuing until such regulation is superseded by other regulations prescribed by the Secretary, no handler shall receive prunes from producers or dehydrators, other than as substandard prunes, unless they meet the minimum standards for natural condition prunes as set forth in § 993.97 (Exhibit A)

(c) *Superseding regulation.* In case the committee should recommend to the Secretary that the minimum standards as to grade, as provided for in paragraph (b) of this section, should be superseded by other minimum standards as to grades and sizes, it shall submit its recommendation to the Secretary, together with the data and information upon which it acted in making such recommendation, including information as to factors affecting the supply of, and demand for, prunes by grades and sizes, and such other information as the Secretary may request. The Secretary shall issue such superseding regulation if he finds, upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act. Any such superseding regulation, insofar as it applies to grades, shall not be below the applicable minimum standards for grades of natural condition prunes as set forth in § 993.97 (Exhibit A), and any such minimum standards for grades shall provide a maximum tolerance for total defects, and may provide a maximum tolerance for single defects or classes of defects. Any superseding regulations issued by the Secretary shall subsequently be modified, suspended, or terminated, in case he finds that the pertinent facts and circumstances so warrant; and the committee, in submitting any recommendation therefor to the Secretary, shall, in each instance, submit to him the information and data on the basis of which such recommendation is made. The committee shall promptly give reasonable publicity to producers, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of each superseding regulation issued by the Secretary. Such publicity may be given through newspapers having general circulation in the area or through other channels, but the committee may use any or all of such media. In addition, the committee shall give written notice by registered mail of each superseding regulation issued by the Secretary to all handlers of whom the committee has a record.

(d) *Inspection.* Each handler shall, at his own expense, cause an inspection to be made of prunes tendered to him by any producer or dehydrator. Prior to accepting any such tender of prunes as prunes meeting the applicable minimum standards for grades and sizes, each such handler shall obtain a certificate that the prunes meet the aforementioned requirements for standard prunes as established pursuant to the provisions of paragraphs (b) or (c) of this section, and said handler shall submit such certificate, or cause it to be submitted, together with such other instruments and records as the committee may require, to the committee. Such certificates shall be issued by inspectors of the Dried Fruit Association of California, No. 1 Drumm Street, San Francisco, California. The Secretary may designate another inspection agency in the event the services of the Dried Fruit Association of California prove unsatisfactory. Any prunes so certified as meeting the applicable requirements shall be known and referred to as standard prunes.

(e) *Substandard natural condition prunes*—(1) *Producer's or dehydrator's options.* Any natural condition prunes tendered to a handler by a producer or dehydrator which fail to meet the applicable minimum standards as to grades and sizes, may: (i) At the producer's or dehydrator's option, be returned to such producer or dehydrator for sorting; or, (ii) by agreement between such producer and handler or dehydrator and handler, be received pursuant to the provisions of subparagraph (2) of this paragraph; or, (iii) be turned over to the handler unsorted to be held by him, as substandard natural condition prunes, for the account of the committee. Any such substandard prunes, except as otherwise specifically provided, shall be treated the same as, and be subject to, the same provisions respecting surplus prunes, as contained in §§ 993.59 through 993.63, and, except those referred to in subparagraph (2) of this paragraph, shall be held by a handler separate and apart from any standard prunes held by him.

(2) *Equivalent quantity basis.* In the event a producer or dehydrator should elect to arrange with a handler for the receiving of substandard prunes tendered by him to such handler for sorting or disposing of such prunes unsorted in conformity with the provisions of this subpart, the inspection agency designated to make inspections of prunes shall issue, at the handler's expense, a certificate of appraisal on such prunes so tendered, which shall show the percentage thereof comprising offgrade prunes necessary to be removed therefrom for the remainder to be standard prunes. A quantity of prunes equivalent to the weight of such offgrade prunes represented by the application of such percentage to the total tonnage so appraised and certified shall be treated as substandard prunes and held as such for the account of the committee: *Provided,* That any prunes so treated as substandard prunes shall be in conformity with the applicable requirements as set forth in subparagraph (3) of this paragraph and § 993.63 (f) No certificate of inspection on such substandard natural condition prunes so tendered shall be required pursuant to this section after a certificate of appraisal has been issued applicable to such prunes.

(3) *Comparable size requirement of prunes treated as surplus substandard prunes.* The weighted average size count of substandard prunes of a size count of 121 or less prunes per pound which are held for the account of the committee by a handler on the equivalent quantity basis prescribed in subparagraph (2) of this paragraph shall not exceed by more than five prunes per pound, when delivered to the committee the weighted average size count of such offgrade prunes in appraisal lots as shown on the applicable certificates of appraisal issued to the handler for that crop year. The weighted average size count of substandard prunes of a size count of 121 or less prunes per pound, which are turned over to a handler unsorted to be held by him as substandard prunes, for the account of the committee, shall be no greater when delivered to the committee than the weighted average size count of such offgrade prunes as shown on the applicable certificates of inspection issued to the handler for that crop year, except for such tolerance allowances in connection with shrinkage in weight as the committee may establish. Any substandard prunes of a size count of 122 or more prunes per pound, whether received as such or in appraisal lots, which are held for the account of the committee by a handler shall have no limitation with respect to the weighted average size count thereof when delivered to the committee: *Provided,* That such substandard prunes shall be treated as a size category separate and apart from any other substandard prunes held by the handler, and when delivered to the committee, the weighted average size count thereof shall not be averaged in with nor affect the

weighted average size count of any other substandard prunes which the handler delivers to the committee.

§ 993.49 *Regulation of the handling of prunes subsequent to their receipt by handlers*—(a) *General.* In order to effectuate the declared policy of the act, no handler shall ship or otherwise make final disposition of natural condition prunes or of processed prunes, except in accordance with the terms and conditions of this section.

(b) *Regulation.* Continuing until such regulation is superseded by other regulations prescribed by the Secretary, except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of natural condition prunes or of processed prunes, which fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A) for standard prunes or standard processed prunes.

(c) *Superseding regulation.* In case the committee should recommend to the Secretary that the minimum standards as to grade, as provided for in paragraph (b) of this section, should be superseded by other minimum standards as to grades and sizes, it shall submit its recommendation to the Secretary together with the data and information upon which it acted in making such recommendation, including information as to factors affecting the supply of, and demand for, prunes by grades and sizes, and such other information as the Secretary may request. The Secretary shall issue such superseding regulation if he finds, upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act. Any such superseding regulation, insofar as it applies to grades, shall not be below the applicable minimum standards for grades of standard prunes or standard processed prunes, as set forth in § 993.97 (Exhibit A) and any such minimum standards for grades shall provide a maximum tolerance for total defects, and may provide a maximum tolerance for single defects or classes of defects. Any superseding regulation issued by the Secretary may subsequently be modified, suspended, or terminated in case he finds that the pertinent facts and circumstances so warrant, and the committee, in submitting any recommendation therefor to the Secretary shall, in each instance, submit to him the information and data on the basis of which such recommendation is made: *Provided,* That, at all times, the regulation shall be comparable so far as practicable, to the then current regulation in effect with respect to the receiving of natural condition prunes by handlers from producers or dehydrators. The committee shall promptly give reasonable publicity to producers, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of each superseding regulation issued by the Secretary. Such publicity may be given through newspapers having general circulation in the area or through other channels, but the committee may use any or all of such media. In addition, the committee shall give written notice by registered mail of each superseding regulation issued by the Secretary to all handlers of whom the committee has a record.

(d) *Inspection.* Each handler shall, at his own expense, before shipping or otherwise making final disposition of prunes, unless they are specifically excepted in this section, cause an inspection to be made of such prunes to determine whether they meet the then applicable grade and size standards for standard prunes or standard processed prunes. Each such handler shall not ship or otherwise make final disposition of such prunes, for any use unless they are specifically excepted in this section, if they do not meet such minimum standards. Such handler shall obtain a certificate that such prunes meet the aforementioned minimum standards and such handler shall submit such certificate, or cause it to be submitted, together with such other instruments and records as the committee may require, to the committee. Such certificates shall be issued by inspectors of the Dried Fruit Association of California, No. 1 Drumm Street, San Francisco, California. The Secretary may designate another inspection agency in the event the services of the Dried Fruit Association of California prove unsatisfactory.

(e) *Exceptions to restrictions*—(1) *Inter-plant and inter-handler transfers.* Notwithstanding the restrictions contained in paragraphs (b) or (c) of this section, any handler may transfer prunes from one plant owned by him to another plant owned by him within the State of California without having any inspection made as provided for in paragraph (d) of this section, and any handler may ship prunes from his plant to another handler's plant within the State of California without having an inspection made as provided for in paragraph (d) of this section. A report of such inter-handler transfer shall be made promptly by the transferring handler to the committee. The receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of this section.

(2) *Defective prunes accumulated from standard prunes and prunes received by a handler for his own account which fail to meet the quality standards for disposition.* Any defective prunes which may be accumulated by a handler by removing them from his standard prunes and any prunes received by a handler for his own account which fail to meet the quality standards for the disposition of prunes, may be disposed of, or marketed for disposition, as animal feed, pitted prunes, or as other prune products in which they lose their form and character as prunes by conversion prior to consumption: *Provided,* That any such prunes which are disposed of, or marketed for disposition, for human consumption shall meet those minimum standards prescribed in § 993.97 (Exhibit A) as relate to the defects of mold, imbedded dirt, insect infestation, and decay. The committee shall issue any such rules and regulations as may be necessary to insure such uses. Each handler shall, at his own expense, before shipping or otherwise making final disposition of prunes under this subparagraph, cause an inspection to be made of such prunes by the inspection agency. Such handler shall obtain from the inspection agency a certificate that such prunes meet the applicable conditions contained in this subparagraph, and submit it, or cause it to be submitted together with such other instruments and records as the committee may require, to the committee. Otherwise, such prunes may be shipped or disposed of for the purposes specified in this subparagraph without regard to the restrictions contained in paragraphs (b), (c), and (d) of this section.

§ 993.50 *Regulation of the handling of prunes during any crop year when the estimated seasonal average price is in excess of parity*—(a) *Determination.* If the Secretary should find that the estimated seasonal average price for prunes for any crop year will be in excess of the price level contemplated by the provisions of section 2 (1) of the act, he shall issue an order in which such finding is set forth, and, in such order, he may provide that, for such crop year, the handling of prunes shall be in accordance with the provisions set forth in this section.

(b) *Receiving of prunes by handlers.* In lieu of the provisions set forth in § 993.48, a handler may receive any tender of prunes from a producer or dehydrator: *Provided,* That such prunes have been properly dried and cured in original natural condition, without the addition of water, and free from active insect infestation, so that they are capable of being received, stored, and packed without deterioration or spoilage. For the assistance of the committee in its supervision of operations under this section, each handler shall, at his own expense, cause an inspection to be made by the inspection agency for the purpose of ascertaining the net weight of the delivery and the percentage of defective prunes in such delivery which is in excess of the maximum tolerances specified in § 993.97 (Exhibit A, paragraph C of subdivision I) and whether the prunes in the delivery meet the requirements of paragraph D of said subdivision I. In the case of each such inspection, the handler shall obtain from the inspection agency a certificate showing the results of the inspection including the percentage of such excess by defects or groups of defects, as the committee may require, and he shall submit such certificate, or cause it to be submitted, together with such other instruments and records as the committee may require, to the committee.

(c) *Disposition of prunes by handlers.* In lieu of the requirements set forth in § 993.49, no handler shall ship or otherwise make final disposition of prunes (regardless of whether natural condition or processed prunes), for human consumption as prunes, which fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A) for natural condition prunes or processed prunes, as the case may be. Also, no handler shall ship or otherwise make

final disposition of natural condition prunes or of processed prunes for use in the manufacture of any prune product for human consumption as food, which fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A) for natural condition prunes or processed prunes, as the case may be, which relate to the defects of mold, insect infestation, imbedded dirt, and decay. Any handler may ship or otherwise make final disposition of any natural condition prunes or of any processed prunes, as the case may be, for any use other than those referred to in the two preceding sentences. Such disposition without regard to the quality of prunes shall include, but is not limited to, disposition for animal feed, botanicals, and distillation. Each handler shall, at his own expense, before shipping or otherwise making final disposition of prunes, cause an inspection to be made by the inspection agency to determine whether they meet the applicable grade standards, as set forth in this paragraph, and he shall obtain from the inspection agency a certificate that such prunes meet the aforementioned applicable minimum standards and submit such certificate, or cause it to be submitted, together with such other instruments and records as the committee may require, to the committee. Notwithstanding the aforesaid restrictions, any handler may transfer prunes from one plant owned by him to another plant owned by him within the State of California, and any handler may ship prunes from his plant to another handler's plant within the State of California, without having such inspection made and certificate issued. A report of each interhandler transfer shall be made promptly by the transferring handler to the committee, and the receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of this paragraph. The committee is hereby authorized to exercise such supervision as may be reasonably necessary to insure that prunes are disposed of for the respective uses for which they were intended, and that the prunes used for each particular purpose meet the applicable minimum grade standards prescribed in this paragraph.

(d) *Inspection agency.* The inspection agency referred to in this section shall be the same as the inspection agency which is provided for in §§ 993.48 and 993.49.

(e) *Assessments.* In lieu of the payment of assessments pursuant to the computation method prescribed in § 993.81 (a) each handler shall pay to the committee, upon demand, with respect to all prunes received by him as the first handler thereof, his pro rata share of such expenses which the Secretary finds will be incurred pursuant to the provisions of § 993.80 by the committee during such crop year. Also, in such an event, each handler's pro rata share of such expenses shall be equal to the ratio between the total tonnage received by him as the first handler thereof during such crop year and the total tonnage received by all handlers as the first handlers thereof during the same crop year. The Secretary shall fix the rate of assessment to be paid by such handlers on the basis of a specified rate per ton. At any time during or after a crop year the Secretary may increase the rate of assessment to apply to all prunes received by handlers as the first handlers thereof during such crop year to obtain sufficient funds to cover any finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. The Secretary shall reduce the assessment rate applicable to all such tonnage during the particular crop year if he finds that when thus reduced it will provide funds sufficient to enable the committee properly to perform its authorized functions. In all other respects, the provisions of §§ 993.80 through 993.82 shall remain in full force and effect.

(f) *Effective provisions.* In any crop year while the provisions of this section are in effect, the provisions of §§ 993.1 through 993.45, §§ 993.71 through 993.77 and §§ 993.84 through 993.93 shall remain in full force and effect, except to the extent that they may be in conflict with the provisions of this section or of the act.

SALABLE AND SURPLUS TONNAGE REGULATIONS

§ 993.59 *Salable and surplus percentages*—(a) *Method of establishment.* (1) After considering all available information and factors used in formulating the marketing policy, the committee, not later than the third Tuesday of June in any crop year, shall recommend to the Secretary the establishment of a salable percentage and a surplus percentage during the crop year for which the marketing policy is developed. The committee shall submit such recommendation to the Secretary within ten days after the initial policy meeting specified in § 993.42. The Secretary shall notify the committee promptly of his tentative views in respect to the committee's initial recommendation as to such percentages. The committee shall hold another meeting in this connection not later than the following July 12 (except that, if such date should fall on a legal holiday, a Saturday, or a Sunday, not later than the following work day) to reconsider its initial recommendations in the matter, including the Secretary's tentative views in respect to such initial recommendations. The committee shall submit to the Secretary, as soon as practicable after the conclusion of this second meeting, a report showing any revisions or changes it desires to make in its initial recommendations on the matter, together with the supporting data and reasons therefor. Whenever the Secretary finds from the recommendation and information submitted by the committee, or from other available information, that to establish a salable percentage and surplus percentage of prunes for any crop year would tend to effectutae the declared policy of the act, he shall so establish such percentages. The total of the salable and surplus percentages fixed each crop year shall equal 100 percent. The salable and surplus percentages fixed for any crop year shall remain in full force and effect throughout the remainder of that crop year and during the following crop year until such percentages are fixed for the following crop year.

(2) The committee shall promptly give reasonable publicity to producers, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of any such percentages made effective by the Secretary. Such publicity may be given through newspapers having general circulation in the area or through other channels, but the committee may use any or all of such media.

(3) In addition, the committee shall give written notice by registered mail of the percentages made effective by the Secretary to all handlers of whom the committee has a record.

(b) *Special conditions under which probable market requirements for prunes in foreign commerce may be excluded, in whole or in part, from the estimates upon which the salable percentage is based.* In the event the committee determines that, based upon then existing conditions, the total estimated supply of prunes in any crop year will exceed the total probable market requirements in domestic and foreign commerce for such crop year, to such an extent that to include all of such probable market requirements in the estimates upon which the salable percentage is based would not tend adequately to effectuate the declared policy of the act, the committee may recommend a salable percentage which excludes the estimated market requirements for prunes of any foreign country, or any group of foreign countries, designated by the committee in its recommendation: *Provided,* That the committee, in formulating its marketing policy, has determined that the market requirements for prunes of such country or group of countries, based on the factors expressed in paragraphs (f) (j), and (k) of § 993.41 and the projections derived therefrom, can be increased, to an extent sufficient to effectuate the declared policy of the act more adequately if such market requirements are supplied pursuant to the provisions of §§ 993.41 (m) and 993.63 (b) (2).

§ 993.60 *Salable tonnage.* The salable tonnage of prunes of a handler shall be the sum of the salable tonnage portions of the prunes delivered to the handler by individual producers and dehydrators. The salable tonnage portion of prunes delivered to the handler by an individual producer or dehydrator shall be the tonnage resulting from the application of the salable percentage to the quantity of prunes (including standard and substandard prunes) so delivered, plus any tonnage of standard prunes delivered by such producer or dehydrator to the handler and covered by a diversion certificate; however, if the salable tonnage portion so computed exceeds the quantity of standard prunes delivered to the handler by the individual producer or dehydrator, it shall be reduced to the quantity of standard prunes so delivered. The handler may sell such salable tonnage in any manner he deems advisable subject to the applicable requirements specified in §§ 993.48 and 993.49. No handler shall handle any quantity of prunes in excess of his salable tonnage, except such prunes as may be obtained

from surplus tonnage as specified in § 993.63, and except as provided in paragraph (g) of § 993.61. In no event, however, shall a handler be prevented from handling salable tonnage acquired by him from another handler who has received such tonnage from producers, dehydrators, or other handlers in accordance with all the provisions of this subpart.

§ 993.61 *Surplus tonnage*—(a) *Computation.* The surplus tonnage of prunes of a handler shall be the sum of the surplus tonnage portions of the prunes delivered to the handler by individual producers and dehydrators. The surplus tonnage portion of prunes delivered to the handler by an individual producer or dehydrator shall be the tonnage resulting from the application of the surplus percentage to the quantity of prunes (including standard and substandard prunes) so delivered, less any tonnage of standard prunes delivered by such producer or dehydrator to the handler and covered by a diversion certificate; however, if the surplus tonnage portion so computed is less than the quantity of substandard prunes delivered to the handler by the individual producer or dehydrator, it shall be increased to the quantity of substandard prunes so delivered. The committee shall authorize and permit a nonprofit cooperative agricultural marketing association, which has contractual authority to so pool the tonnage of its members, to concentrate the tonnage of its producer members before applying the surplus tonnage provision of this subpart.

(b) *Holding and delivery.* Each handler shall hold for the committee in proper storage, all surplus tonnage received by him until relieved of such obligation by the committee. The committee may, at any time, require a handler to deliver to it, or to anyone designated by it, at such handler's warehouse or at such other place as the prunes may be stored by the handler, surplus tonnage held by him. The committee may require that such delivery consist of natural condition prunes or it may arrange for such delivery to consist of processed prunes.

(c) *Substandard surplus prunes.* Substandard prunes, except defective prunes referred to in § 993.49 (e) (2), shall be held separate from other prunes held by any handler. The committee shall dispose of substandard prunes as expeditiously as it is practicable to do so, in any manner designated by the committee which is not contrary to any provisions of this subpart for the disposition of substandard prunes.

(d) *Storage facilities.* The committee may rent and operate, or arrange for the use of, facilities for storage and handling of surplus tonnage.

(e) *Exchange.* The committee may establish methods and procedures, including compensating payments, for the exchange by handlers of salable tonnage prunes for surplus standard prunes held by or for the committee, of the various grades and sizes of prunes: *Provided, however* That no such exchange shall be permitted of substandard prunes. Such transfers shall be on a negotiated basis.

(f) *Payment for services.* Handlers shall be paid for necessary services rendered by them in connection with surplus tonnage, including, but not limited to, receiving, storing, grading, and fumigating, in accordance with a schedule of payments established by the committee and approved by the Secretary. If any hander, prior to December 1 of the crop year, demands removal of such surplus tonnage by the committee, such handler automatically waives payment for any and all charges that may have accrued for storing such surplus tonnage, including in and out charges. When any demand for removal is made, the committee shall remove such surplus tonnage from said handler's possession as expeditiously as practicable, and in any event within 30 days following receipt of written notice.

(g) *Deferment of obligation.* The committee may defer, upon the written request of any handler and for good and sufficient cause, the fulfilling by such handler of his surplus tonnage obligation for a specified period ending not later than November 15 of the then current crop year: *Provided,* That no handler shall dispose of any tonnage of standard prunes during such deferment period in excess of the tonnage he is authorized to handle as specified in § 993.60 plus the tonnage for which such handler holds purchase contracts with producers and dehydrators. As a condition to the granting of any such deferment, the committee shall require the handler to obtain and file with it a written undertaking that by the end of the deferment period he will have fully satisfied his obligation with respect to the holding or control by him of the surplus tonnage applicable to his receipts of prunes from producers and dehydrators. Such undertaking shall be secured by a bond or bonds to be filed with, and acceptable to, the committee, with surety or sureties satisfactory to the committee, running in favor of the committee and the Secretary, and for an amount computed on the basis of the then current market value of the prunes in the quantity for which the deferment is granted. The cost of such bond shall be borne by the handler filing same. Any sums collected through default of a handler on his bond shall, after reimbursement of the committee for any expenses incurred by it in effecting collection, be deposited with the funds obtained by it from the disposition of the surplus tonnage and disbursed by it to persons as set forth in § 993.63 (i) (2) In addition to the foregoing, the committee may establish other reasonable terms and conditions upon which such deferments may be granted.

§ 993.62 *Diversion privileges.* The word "prunes" as used in this section means plums of a variety used in the production of prunes. No producer shall be required to divert all or any portion of these prunes. Any producer may, if he chooses, participate to the extent set forth in this section, by diverting all or a portion of his production of prunes to nonhuman uses or may divert such prunes by leaving them unharvested, or may divert them to such other uses as may be approved by the committee, subject to the following terms and conditions:

(a) The producer shall first make application in writing to the committee for permission to divert prunes, disclosing in such application whether such prunes are to be diverted to nonhuman use, whether they are to be left unharvested, or to what other use they are to be diverted, and describing in detail the location of such prunes or portion thereof.

(b) If the committee approves such application, it shall estimate the amount of the production to be so diverted, on a dried weight basis, and shall advise the applicant, in writing, of its estimate of such dried production and of its approval of the application to divert, subject to satisfactory proof by the applicant that such prunes have actually been diverted as stated in his application.

(c) After receipt by the committee of satisfactory proof of such diversion, the committee shall issue to the applicant and made out in his name, a certificate of salable tonnage or diversion certificate for the dried weight of such prunes equal to the salable percentage as applied to the estimated dried production.

(d) Such diversion certificate shall not be transferable to another producer, or a handler, or any other person, except with the approval of the committee, evidenced by its endorsement of approval on the certificate.

(e) A certificate of salable tonnage or diversion certificate, so issued, shall entitle a producer to deliver to a handler, and a handler to receive, the specified dried weight of prunes free from all surplus set aside requirements in addition to the portion of all of such producer's delivery which would otherwise constitute salable tonnage, and shall entitle a handler, upon presentation of such certificate to the committee to satisfy his surplus tonnage requirements to the extent of the dried weight of prunes specified in such certificate.

(f) Any producer who diverts prunes pursuant to the provisions of this section and any other holder of diversion certificate, shall not be entitled to participate in the proceeds of the surplus tonnage for any prunes so diverted.

(g) Prior to the delivery of the diversion certificate to the producer, he shall pay to the committee the reasonable expense assessed by the committee for examining, estimating, weighing, or otherwise supervising the diversion.

§ 993.63 *Disposition of surplus tonnage*—(a) *Sales to United States Government and foreign governments.* (1) The committee is authorized to sell direct, or to sell to handlers for resale, surplus tonnage to the United States Government or to any agency thereof (including, but not limited to, sales for domestic or foreign relief purposes, school lunch and institutional feeding, or for foreign economic assistance), or to any foreign government. Such sales may be

at negotiated prices with adequate consideration to probable processing costs.

(2) The committee shall file with the Secretary, by telegram or air mail letter, seven calendar days prior to making any offer to sell to any foreign government, surplus prunes pursuant to this paragraph, complete information with respect thereto, including the basis therefor. The Secretary shall have the right to disapprove, within such seven-day period, the making of such an offer or any term or condition thereof.

(b) *Sales for export*—(1) *Countries included in estimate of salable percentage.* In the event it appears that the total salable tonnage is not, or will not be, sufficient to meet the estimated domestic and foreign requirements due to the expansion of foreign markets in countries which were included in the estimates upon which the salable percentage was based, to a greater extent than was anticipated at the time the salable percentage was recommended to the Secretary, the committee may offer to sell, and sell, to handlers for resale, surplus standard prunes sufficient to meet such deficiency in the salable tonnage. The quantity of prunes included in any offer to sell to individual handlers shall be in such proportion as the committee determines will effect equity among all handlers. Prior to making any offer, the committee shall determine the price at which the prunes included in such offer shall be sold, taking into consideration factors and conditions affecting the marketing of prunes at the time of such offer and establishing a price consistent with such factors and conditions.

(2) *Countries not included in estimate of salable percentage.* In any crop year in which the estimated market requirements of a foreign country or group of foreign countries are excluded from the estimates upon which the salable percentage is based, the committee shall offer to sell, and sell, to handlers, a quantity of surplus standard prunes not greater than the aggregate quantity of standard prunes, and standard processed prunes calculated on the basis of natural condition weight, sold and shipped by all handlers for use in or shipment to such country or group of countries during such crop year. At the end of each month, or at the end of any period shorter than a month that the committee may establish, to the extent that surplus standard prunes are available and uncommitted, the committee shall offer a quantity thereof equivalent to the aggregate quantity of standard prunes, and standard processed prunes calculated on the basis of natural condition weight, sold by all handlers for use in or shipment to such foreign country or group of foreign countries during the period just ended. Any cancellation of a sale in or for shipment to such foreign country or group of foreign countries shall be adjusted in the period in which such cancellation occurs, or as soon thereafter as is reasonably practicable, by reducing the quantity of prunes subsequently offered by the quantity of prunes included in such cancelled sale. In any offer by the committee to sell surplus standard prunes to handlers pursuant to this subparagraph, each handler shall be given the first opportunity to purchase his share of the offer, which share shall be determined as the same proportion that the respective surplus tonnage held by him is of the total surplus tonnage held by all handlers. In the event that any handler declines or fails to purchase any or all of his share of such offer, the remaining portion thereof shall be reoffered by the committee to all handlers who purchased all of their respective shares of such offer, in proportion to their respective shares: *Provided,* That unless otherwise authorized by the committee the total quantity of prunes that may be offered hereunder to an individual handler shall not exceed the total quantity of uncommitted surplus standard prunes held by him for the account of the committee at the time of the offer. Any such sales to handlers shall be made in accordance with the established terms and conditions, including pricing formulae, which are in effect at the time of the sale. The committee shall withhold from the proceeds from each pound of prunes it sells hereunder to handlers for each period an amount equal to that established by the committee as the compensating payment calculated for that period to be paid to handlers for supplying the market requirements of a foreign country or group of foreign countries excluded from the estimates upon which the salable percentage for such crop year was based. The total amount of money distributed among handlers as compensating payments for such period shall be limited to the funds so withheld from the proceeds of the surplus standard prunes sold hereunder to handlers for such period. Such funds shall be allocated equitably among handlers in accordance with terms and conditions established by the committee. Handlers who have purchased their full shares of the surplus standard prunes offered for such period shall have priority in such allocation over handlers who shall have failed to purchase their full shares of such offer. No handler shall be compensated at a rate greater than that established as the compensating payment for such period. In the event the rate of such compensation to any handler is less than that established as the compensating payment for such period, the committee shall release to such handler, in lieu of money and for use as salable tonnage, a quantity of surplus standard prunes held by him for the account of the committee sufficient to rectify the deficiency in the rate paid to such handler, the value of the surplus standard prunes so released to be established on the basis of the price at which such prunes were offered during such period. The compensating payments, applicable to any prunes sold by any handler for shipment to or use in a foreign country or group of foreign countries excluded from the estimates upon which the salable percentage was based, shall not be made until satisfactory proof of the shipment of such prunes has been furnished to the committee. The committee shall establish for each period a final date before which the shipment of prunes so sold during such period shall be made in order for the handler making the sale thereof to qualify for the compensating payment applicable thereto: *Provided,* That the committee shall not establish any such date for any period during a crop year that will permit a handler to ship any such prunes later than July 31 of such crop year and to qualify for the compensating payment for such period. The maximum quantity of prunes for which a handler shall be entitled to receive compensating payments hereunder during any crop year shall be limited to the total quantity of surplus standard prunes, received from producers and dehydrators during such crop year and held by him for the account of the committee, uncommitted to anyone other than to him: *Provided,* That in the event that the committee shall have given such handler specific authority to sell, for shipment during such crop year to a foreign country or group of foreign countries excluded from the estimates upon which the salable percentage was based, a quantity of standard prunes, or standard processed prunes, in excess of such uncommitted surplus standard prunes so received and held by him, he shall be entitled to receive compensating payments applicable thereto after qualifying hereunder for such compensating payments.

(3) *Countries estimated to have no probable market requirements.* In case a handler, during any crop year, sells a quantity of prunes for shipment to and for use in a foreign country which, at the time the salable and surplus percentages for such crop year were recommended, the committee estimated would have no probable market requirement, the committee may, upon adequate proof of such sale, offer to sell, and sell, to such handler a quantity of surplus standard prunes, held by him for the account of the committee, and uncommitted, equivalent to the quantity so sold for use in such foreign country calculated on the basis of natural condition weight. Prior to making any offer, the committee shall determine the price at which the prunes included in such offer shall be sold, taking into consideration the price received for the quantity of salable tonnage prunes sold for use in such country by the handler, together with other factors and conditions affecting the marketing of prunes at the time of such offer. The committee may also sell direct to such a foreign market surplus standard prunes or surplus standard processed prunes for use in the foreign country in which such market develops if it determines that the sale cannot reasonably be made by handlers from salable tonnage. Any such direct sale by the committee may be made at a negotiated price.

(4) *Notice to Secretary of proposed sales for export.* The committee shall file with the Secretary, by telegram or air mail letter, seven calendar days prior to making any offer to sell under either subparagraph (1) or subparagraph (3) of this paragraph, surplus standard prunes or surplus standard processed prunes pursuant to this paragraph, com-

plete information with respect thereto, including the basis for such proposal. The Secretary shall have the right to disapprove, within such seven-day period the making of such an offer or any term or condition thereof. No such notice of individual offers under subparagraph (2) of this paragraph shall be required, but the committee shall keep the Secretary currently informed in respect thereto.

(c) *Sales for animal feed and certain manufacturing uses.* The committee may sell any surplus prunes for animal feed, botanicals, distillation, or for any manufacturing uses which were not provided for in estimating the salable quantity of standard prunes for the then current crop year. Such sales may be made at negotiated prices. The committee is hereby authorized to exercise such supervision as may be reasonably necessary to insure that such prunes are disposed of for the respective uses for which they are sold.

(d) *Sales to handlers*—(1) *Authorization under specified supply conditions.* If the committee finds that total contracted sales by all handlers during the crop year exceeds 80 percent of the total salable tonnage received by all handlers plus 80 percent of the estimated tonnage held unsold by producers and dehydrators which would become salable tonnage; or, if the committee finds that more than 20 percent of the uncontracted salable tonnage is being held so tightly by relatively few handlers, dehydrators, or producers as seriously to restrict commerce in prunes, and if 75 percent of all handlers have made a written request therefor and such requesting handlers have purchased over 65 percent of the salable tonnage purchased from producers and dehydrators, the committee may, in either event, sell to handlers standard prunes from he surplus tonnage for use as salable tonnage, subject to the additional conditions set forth in subparagraphs (2) (3) (4) (5) and (6) of this paragraph.

(2) *Authorized commencement date.* No such sale shall be made prior to December 15 of the crop year.

(3) *Quantity limitation.* No single sales offer of surplus tonnage to handlers shall exceed 20 percent of the original estimated salable tonnage.

(4) *Prices.* If any such sale is made for manufacturing purposes in which the prunes will lose their form and character as prunes by conversion prior to consumption, it may be made by the committee at a negotiated price; otherwise, such sales shall not be made by the committee at a price below that which reflects the average price received by producers for salable tonnage during the then current crop year to a date as near as practicable to the date of the offer, as shown by the reports required to be filed under the provisions of § 993.73, plus accrued charges for receiving and storing of surplus tonnage.

(5) *Pro rata shares and termination of offers.* In any offer by the committee to sell surplus tonnage to handlers pursuant to this paragraph, each handler shall be given the first opportunity to purchase his share of the offer, which share shall be determined as the same proportion that the respective surplus tonnage held by him is of the surplus tonnage held by all handlers. In the event that any handler declines or fails to purchase any or all of his share of any such offer, the remaining portion thereof shall be re-offered by the committee to all handlers who purchased all of their respective shares of such offer, in proportion to their respective shares. Any balance remaining unsold after such re-offer shall be withdrawn from the particular offer. Any offer outstanding as of July 5 of any crop year shall be withdrawn and the committee shall not make any further offer to sell surplus tonnage to handlers after that date, except that if the committee determines, with the approval of the Secretary, that a major change in conditions has occurred, such as the involvement of the United States in war or a crop failure in the following year, or any other significant development, which indicates a shortage of supply, the said July 5 limitation shall no longer apply.

(6) *Notice to Secretary of proposed sales to handlers.* The committee shall file with the Secretary, by telegram or air mail letter, seven calendar days prior to making any offer to sell surplus prunes pursuant to this paragraph, complete information with respect thereto, including the basis therefor. The Secretary shall have the right to disapprove, within such seven-day period, the making of such an offer or any term or condition thereof.

(e) *Sales of standard prunes for manufacturing purposes*—(1) *Manufacturing outlets included in estimate of salable percentage.* In the event it appears that the total salable tonnage is not sufficient to meet the estimated domestic and foreign requirements due to the expansion of manufacturing outlets, which outlets were provided for in estimating the salable percentage, to a greater extent than was anticipated at the time of estimating the salable percentage, the committee may offer to sell, and sell, surplus standard prunes to handlers for resale or use for such manufacturing purposes in which such prunes will lose their form and character as prunes by conversion prior to consumption, in such quantities as are necessary to meet the increased demand. The quantity of prunes offered to individual handlers to meet such deficiency shall be in the proportion that the respective handler's sales or uses for manufacturing bears to sales or uses for manufacturing by all handlers. No such sale shall be made by the committee at a price below that which reflects the average price received by producers for salable tonnage during the then current crop year to a date as near as practicable to the date of the offer, as shown by the reports required to be filed under the provisions of § 993.73, plus accrued charges for receiving and storing of surplus tonnage.

(2) *Manufacturing outlets not included in estimate of salable percentage.* The committee may offer to sell, and sell, to any handler, a quantity of surplus standard prunes for any manufacturing use, which manufacturing use was not included in the estimates upon which the salable percentage was based either because it was considered to have no probable market requirement or because it was not considered in any way by the committee, in the event of proof of demand for such quantity for such purpose. Such sale may be made at a negotiated price. The committee shall require proof that any standard prunes so sold were used for the purpose for which they were sold.

(3) *Notice to Secretary of proposed sales of standard prunes for manufacturing purposes.* The committee shall file with the Secretary, by telegram or air mail letter, seven calendar days prior to making any offer to sell under either subparagraph (1) or subparagraph (2) of this paragraph surplus standard prunes to handlers pursuant to this paragraph, complete information with respect thereto including the basis for such proposal. The Secretary shall have the right to disapprove, within such seven-day period, the making of such offer or any term or condition thereof.

(f) *Sales of substandard prunes for animal feed and for manufacturing purposes.* Except as provided in the next two succeeding sentences of this paragraph, the committee may sell direct, or sell to handlers for resale, substandard prunes for animal feed, and for any manufacturing purpose in which such prunes will lose their form and character as prunes by conversion prior to consumption: *Provided,* That any such prunes which are sold for disposition for manufacturing purposes for human consumption, either directly to handlers, or for resale by handlers, shall, at the time of such disposition or use, meet those minimum standards prescribed in § 993.97 (Exhibit A) as relate to the defects of mold, imbedded dirt, insect infestation, and decay, and any such prunes so sold by the committee to a person who is not a handler shall meet those quality standards at the time of disposition by the committee. Whenever a certificate of inspection applicable to prunes turned over to a handler unsorted by a producer or dehydrator to be held by such handler as substandard natural condition prunes for the account of the committee pursuant to the provisions of § 993.48 (e) (1) (iii) shows that such prunes fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A), when considered in terms of the entire lot, as they relate to the defects of mold, imbedded dirt, insect infestation, and decay, such prunes shall be sold or disposed of by the committee only to persons who are not handlers of prunes and only for disposition as animal feed, for distillation, or for any use other than for human consumption. Whenever a certificate of appraisal issued pursuant to the provisions of § 993.48 (e) (2) shows that if the quantity of substandard prunes to which such certificate applies were to have all offgrade prunes removed therefrom such offgrade prunes would fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A) as they relate to the defects of mold, imbedded dirt, insect infestation, and decay, a quantity of prunes equivalent to the weight of

such offgrade prunes necessary to be removed from the total tonnage shown on the applicable certificate in order for the remainder to be standard prunes shall be sold or disposed of by the committee only to persons who are not handlers of prunes and only for disposition as animal feed, for distillation, or for any use other than for human consumption. No sales of substandard prunes for manufacturing purposes for human consumption shall be made while standard prunes are available in the surplus tonnage. The committee is hereby authorized to exercise such supervision as may be reasonably necessary to insure that substandard prunes are disposed of for the respective uses for which they were sold. All such sales may be made at negotiated prices.

(g) *Donations of surplus prunes.* The committee may donate limited quantities of surplus prunes for use in research or promotional activities.

(h) *Unsold surplus tonnage.* The committee shall endeavor to sell all prunes in the surplus tonnage at a rate so as to achieve, as nearly as may be practicable, the complete disposition of the surplus tonnage not later than July 31 of the crop year. Any surplus tonnage remaining unsold as of July 31 shall be disposed of as soon as practicable for animal feed, distillation, or in any other outlets which are not competitive with the sale of prunes in normal marketing channels, not otherwise provided for in this paragraph, unless determination with respect to a shortage of supply has been made as provided for in paragraph (d) (5) of this section. The committee may dispose of unsold surplus prunes after July 31 at negotiated prices.

(i) *Proceeds of sales of surplus tonnage*—(1) *Charges against proceeds.* Expenses incurred by the committee for the receiving, handling, holding, or disposing of any quantity of surplus tonnage shall be charged against the proceeds of sales of surplus tonnage.

(2) *Distribution of net proceeds.* Net proceeds from the disposition of surplus tonnage shall be distributed by the committee either directly, or through handlers as agents of the committee, under safeguards to be established by the committee, to persons in proportion to their contributions thereto, or to assignees of such interests, with appropriate grade and size differentials as established by the committee. Progress payments may be made by the committee in the same manner, as sufficient funds accumulate. Distribution of the proceeds in connection with the surplus tonnage contributed by a nonprofit cooperative agricultural marketing association which has authority to market prunes of its members and to allocate the proceeds therefrom to such members shall be made to such association, if it so requests. Prior to making any such distribution, the committee shall submit to the Secretary a report including all pertinent details with respect thereto.

(j) *Prohibition against the hypothecation of surplus.* In no event shall the committee hypothecate surplus tonnage.

(k) *Hypothecation of binding written contracts for the sales of surplus prunes.* The committee may hypothecate binding written contracts for the sales of surplus prunes, for the purpose of obtaining funds for the distribution of proceeds of the sales of surplus tonnage prunes in accordance with the provision of subparagraph (2) of paragraph (i) of this section: *Provided,* There are included in, and made a part of, the loan agreement in connection with each such loan the following terms and conditions: (1) The recourse of the lender shall be confined to the particular sales contract, or the proceeds which are derived therefrom; (2) neither the Secretary, the committee, nor any of the committee's members, alternate members, officers, or employees, shall be liable, for the repayment of the particular loan; and (3) the lender waives any right which he might otherwise have, in case of default in repayment of such loan, to take any action to obtain either possession or control of the surplus prunes involved.

REPORTS AND BOOKS AND OTHER RECORDS

§ 993.71 *Confidential information.* All reports and records furnished or submitted by handlers to the committee which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received shall be received by, and at all times kept in the custody and under the control of one or more employees of the committee, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this section, information may be disclosed to the committee when reasonably necessary to enable the committee to carry out its functions under this subpart.

§ 993.72 *Reports of acquisitions, sales, uses, and shipments.* Each handler shall file such reports of his acquisitions, sales, uses, and shipments of prunes, as may be requested by the committee.

§ 993.73 *Reports of prices.* Each handler shall file with the committee such price reports as may be requested by the committee, showing the weighted average price paid by such handlers to producers and dehydrators for each size of prunes and the quantity purchased at each such price, to enable the committee to determine the average price received by producers for the purposes set forth in § 993.63.

§ 993.74 *Reports of surplus tonnage.* Each handler shall file with the committee such reports of the total substandard prunes and other surplus tonnage by grade and size classifications thereof, held in his warehouses or under his control and the location thereof, as may be requested by the committee.

§ 993.75 *Other reports.* Upon the request of the committee, each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this subpart.

§ 993.76 *Records.* Each handler shall maintain such records of prunes received, held, and disposed of by him as are prescribed by the committee and needed by it to perform its functions under this subpart.

§ 993.77 *Verification of reports.* For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this subpart, the committee, through its duly authorized agents, shall have access to any premises where prunes may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any prunes so held by such handler and any and all records of such handler with respect to the holding or disposition of all prunes which may be held or which may have been disposed of by him.

EXPENSES AND ASSESSMENTS

§ 993.80 *Expenses.* The committee is authorized to incur such expenses (exclusive of expenses for the receiving, handling, holding, or disposing of any quantity of surplus tonnage) as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The recommendation of the committee as to these expenses and the recommended rate of assessment for each crop year, together with all data supporting such recommendations, shall be filed with the Secretary not later than the fourth Tuesday of July preceding the crop year in connection with which such recommendations are made.

§ 993.81 *Assessments*—(a) *Requirement for payment and rate of assessment.* The funds to cover the expenses of the committee (exclusive of expenses for the receiving, handling, holding, or disposing of any quantity of surplus tonnage) shall be acquired by levying assessments. Each handler shall pay to the committee, upon demand, with respect to all salable tonnage prunes handled by him as the first handler thereof and on all prunes sold to him from surplus tonnage for resale to other than Federal governmental agencies, his pro rata share of such expenses which the Secretary finds will be incurred as aforesaid, by the committee during each crop year. Each handler's pro rata share of such expenses shall be equal to the ratio between the total salable tonnage handled by him as the first handler thereof plus the tonnage sold to him from surplus tonnage for resale to other than Federal governmental agencies, during the applicable crop year, and the total salable tonnage prunes handled by all handlers as the first handlers thereof plus tonnage sold to such handlers from surplus tonnage for resale to other than Federal governmental agencies, during the same crop year. The Secretary shall fix the rate of assessment to be paid by such handlers on the basis of a specified rate per ton. At any time during or after a crop year the Secretary may increase the rate of assessment to apply to all salable tonnage prunes handled by handlers as the first handlers thereof and on all tonnage sold to handlers from sur-

plus tonnage for resale to others than Federal governmental agencies during such crop year to obtain sufficient funds to cover any finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. The Secretary shall reduce the assessment rate applicable to all such tonnage during the particular crop year if he finds that when thus reduced it will provide funds sufficient to enable the committee properly to perform its functions under this subpart.

(b) *Advance payments.* In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) *Use and refund of excess funds from assessments.* Any money collected as assessments during any crop year and not expended in connection with the respective crop year's operations hereunder may be used and shall be refunded by the committee in accordance with the provisions hereof. Such excess funds may be used by the committee during the period of five months subsequent to such crop year in paying the expenses of the committee incurred in connection with the new crop year. The committee shall, however, from funds on hand, including assessments collected during the new crop year, distribute or otherwise make available, within six months after the beginning of the new crop year, the aforesaid excess, as verified by audit, to each handler from whom an assessment was collected, as aforesaid, in the proportion that the amount of the assessment paid by the respective handler bears to the total amount of the assessments paid by all handlers during said previous crop year. Any money collected from assessments hereunder and remaining unexpended in the possession of the committee upon the termination hereof shall be distributed in such manner as the Secretary may direct.

(d) *Suits for collection.* The committee may, with the approval of the Secretary, maintain in its own name, or in the name of its members, a suit against any handler for the collection of such handler's assessment.

§ 993.82 *Funds.* All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes authorized in this subpart and shall be accounted for in the manner provided for in this subpart. The Secretary may, at any time, require the committee or its members and alternate members to account for all receipts and disbursements.

MISCELLANEOUS PROVISIONS

§ 993.84 *Personal liability.* No member or alternate member of the committee, or any employee, representative, or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ 993.85 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 993.86 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 993.87 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 993.88 *Agents*—(a) *Authorization by Secretary.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

(b) *Authorization by committee.* The committee may authorize any person or persons or agency to act as its agent or representative in connection with the provisions of this subpart.

§ 993.89 *Effective time.* The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or during suspension, in one of the ways specified in § 993.90.

§ 993.90 *Termination or suspension*—(a) *Failure to effectuate policy of act.* The Secretary may, at any time, terminate the provisions of this subpart, by giving at least one day's notice by means of a press release or in any other manner which he may determine. The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(b) *Referendum.* The Secretary shall terminate the provisions of this subpart on or before the fifteenth day of July of any crop year, to be effective at the end of such crop year, whenever he is required to do so by the provisions of section 8c (16) (B) of the act. The Secretary may, at any time he deems it desirable, hold a referendum of producers to determine whether they favor termination of this subpart. However, beginning with 1951, if the Secretary receives a recommendation, adopted by at least a majority vote of the producer members of the committee, requesting the holding of such a referendum, the Secretary shall hold such a referendum: *Provided,* That the Secretary shall not be required to hold such a referendum upon the basis of such a request more than once every two years.

(c) *Termination of act.* The provisions of this subpart shall terminate, in any event, upon the termination of the act.

§ 993.91 *Procedure upon termination.* Upon the termination of this subpart, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustee shall require the concurrence of a majority of the said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claim vested in the committee or the joint trustees, pursuant to this subpart. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said committee and upon said joint trustees.

§ 993.92 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendement to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter rise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ 993.93 *Amendments.* Amendments to this subpart may be proposed from time to time, by any person or by the committee, and may be made a part of this subpart by the procedures provided under the act.

§ 993.97 *Exhibit A, minimum standards.*

I. Minimum standards for natural condition prunes:

A. *Defects.* Defects are: (1) Off-color; (2) inferior meat condition; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms.* (1) "Off-color" means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) "Inferior meat condition" means flesh which is fibrous, woody or otherwise

inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) "End cracks" means callous growth cracks, at the blossom end of prunes, aggregating more than three-eighths of one inch (⅜") but not more than one-half of one inch (½") in length.

(4) "Fermentation" means damage to the flesh by fermentation to the exent that the characteristic appearance or flavor is substantially affected.

(5) "Skin or flesh damage" means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eighths of one inch (⅜") in length;

(b) Splits or skin breaks exposing flesh and affecting materially the normal appearance of the prunes.

(c) Any cracks, splits or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality;

(e) Skin damage caused by rain or overdipping to the extent that the prunes cannot be processed normally without material sloughing of the skin.

(6) "Scab" means tough or thick scab exceeding in the aggregate the area of a circle three-eighths of one inch (⅜") in diameter or by unsightly scab of another character exceeding in the aggregate the area of a circle three-fourths of one inch (¾") in diameter.

(7) "Burned" means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) "Mold" means a characteristic fungus growth and is self-explanatory.

(9) "Imbedded dirt" means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot be removed in normal processing.

(10) "Insect infestation" means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) The tolerance allowance for decay shall not exceed one percent (1%).

(2) The combined tolerance allowance for mold, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%).

(3) The combined tolerance allowance for fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed eight percent (8%).

(4) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(5) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed twenty percent (20%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) Prunes showing obvious live insect infestation shall be fumigated prior to acceptance.

D. Natural condition prunes must be properly dried and cured in original natural condition, without the addition of water, and free from active infestation, so that they are capable of being received, stored and packed without deterioration or spoilage.

II. Minimum standards for processed prunes:

A. *Defects.* Defects are: (1) Off-color; (2) inferior meat condition; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms.* (1) "Off-color" means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) "Inferior meat condition" means flesh which is fibrous, woody or otherwise inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) "End cracks" means callous growth cracks, at the blossom end of prunes, aggregating more than three-eights of one inch (⅜") but not more than one-half of one inch (½") in length.

(4) "Fermentation" means damage to the flesh by fermentation to the extent that the characteristic appearance or flavor is substantially affected.

(5) "Skin or flesh damage" means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eights of one inch (⅜") in length;

(b) Splits or skin breaks exposing flesh and materially affecting the normal appearance of French prunes; or markedly affecting the normal appearance of varieties other than the French variety;

(c) Any cracks, splits or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality.

(6) "Scab" means tough or thick scab exceeding in the aggregate the area of a circle three-eighths of one inch (⅜") in diameter or by unsightly scab of another character exceeding in the aggregate the area of a circle three-fourths of one inch (¾") in diameter.

(7) "Burned" means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) "Mold" means a characteristic fungus growth and is self-explanatory.

(9) "Imbedded dirt" means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot be readily removed in washing the fruit.

(10) "Insect infestation" means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) There shall be no tolerance allowance for live insect infestation.

(2) The tolerance allowance for decay shall not exceed one percent (1%).

(3) The combined tolerance allowance for mold, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%).

(4) The combined tolerance allowance for fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed eight percent (8%).

(5) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed twenty percent (20%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

§ 993.98 *Special agreement provisions*—(a) *Counterparts.* This amended agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all such signatures were contained in one original.*

(b) *Additional parties.* After the effective date of this amended agreement any handler may become a party hereto if a counterpart is executed by him and delivered to the Secretary. This amended agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and the benefits, privileges, and immunities conferred by this amended agreement shall then be effective as to such new contracting party.*

(c) *Order with marketing agreement.* Each signatory handler favors and approves the issuance of an amended order by the Secretary, regulating the handling of prunes in the same manner as is provided for in this amended agreement, and each signatory handler hereby requests the Secretary to issue, pursuant to the act, such an amended order.*

Issued at Washington, D. C., this 27th day of August 1953.

[SEAL] ROY W. LENNARTSON,
Assistant Administrator Production and Marketing Administration.

[F. R. Doc. 53-7645; Filed, Sept. 1, 1953; 8:45 a. m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 20]

[Docket No. FDC-34 (a)]

ICE CREAM, FROZEN CUSTARD, SHERBET, WATER ICES, AND RELATED FOODS; DEFINITIONS AND STANDARDS OF IDENTITY

ORDER EXTENDING TIME FOR FILING WRITTEN ARGUMENTS

On July 30, 1953, the Secretary of Health, Education, and Welfare extended the time for interested persons to file written arguments in the matter of fixing and establishing standards of identity for ice cream, frozen custard, sherbet, water ices, and related foods to August 31, 1953.

Upon the request of interested persons who appeared at the hearing further to extend the period of time for filing such written arguments and good cause therefor appearing: *It is ordered,* That the time for filing such documents be hereby extended to September 17, 1953, and that said extension shall apply to any

interested person whose appearance was filed at the hearing.

Dated: August 28, 1953.

[SEAL] RUSSELL R. LARMON,
Acting Secretary.

[F. R. Doc. 53-7705; Filed, Aug. 31, 1953; 1:11 p. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[Docket No. 10670]

TELEVISION BROADCAST STATIONS

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of assignments,* rules governing television broadcast stations; Docket No. 10670.

1. Notice is hereby given that the Commission has received a proposal for rule making in the above entitled matter.

2. The Commission has before it for consideration a petition filed by Carl Bloomquist, Eveleth, Minnesota, August 13, 1953, and now made part of this docket, requesting an amendment of § 3.606 *Table of assignments,* rules governing television broadcast stations as follows:

City	Channel No.	
	Present	Proposed
Hibbing, Minn.	10+	
Virginia, Minn.	26+	10+, 26+
Hancock, Mich.	10—	
Laurium, Mich.	None	10—

As an alternative to the deletion of Channel 10 from Hancock, Michigan, without a substitute channel, petitioner suggests that Channel 13 be deleted at Calumet, Michigan, and assigned to Hancock.

3. In support of his proposal petitioner urges that Virginia, Minn., is the central city of the iron ore area known as the Mesabi Range; that he proposes to file an application for a television station on the proposed channel to serve this area, that a VHF assignment would provide a satisfactory service due to the mountainous character of the region; and that the proposed amendments conform with the Commission's Rules and standards.

4. Authority for the adoption of the proposed amendment is contained in sections 4 (i) 301, 303 (c) (d) (f) and (r) and 307 (b) of the Communications Act of 1934, as amended.

5. Any interested party who is of the opinion that the amendment proposed by petitioner should not be adopted or should not be adopted in the form set forth herein may file with the Commission on or before September 30, 1953 a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments or briefs. The Commission will consider all such comments that are submitted before taking action in this matter, and if any comments appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

6. In accordance with the provisions of § 1.764 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: August 26, 1953.

Released: August 27, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WM. P MASSING,
Acting Secretary.

[F. R. Doc. 53-7668; Filed, Sept. 1, 1953; 8:50 a. m.]

[47 CFR Part 3]

[Docket No. 10671]

TELEVISION BROADCAST STATIONS

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606, *Table of assignments,* rules governing television broadcast stations; Docket No. 10671.

1. Notice is hereby given that the Commission has received a proposal for rule making in the above-entitled matter.

2. The Commission has before it for consideration a petition filed on August 21, 1953, by Head of the Lakes Broadcasting Company, Duluth, Minnesota, and now made part of this docket, requesting an amendment of § 3.606 *Table of assignments,* rules governing television broadcast stations as follows:

City	Channel No.	
	Present	Proposed
Duluth, Minn.-Superior, Wis.	3, 6+ *8—, 32, 38.	3, 6+ *8—, 12, 38.
Brainerd, Minn.	12	37
Iron River, Mich.	12—	33—

3. In support of its proposal petitioner urges that Brainerd with a population of 12,637 and Iron River with a population of 4,048 have no television station or service; that it would make little difference as far as the viewing public is concerned whether a VHF or UHF channel is assigned; that the proposed assignment would permit the granting of three applications for VHF stations in the Duluth-Superior area without changing the total number of assignments; and that the proposed substitution of a VHF channel for an UHF channel complies with the requirements of section 307 (b) of the Communications Act.

4. Authority for the adoption of the proposed amendments is contained in sections 4 (i) 301, 303 (c), (d), (f), and (r) and 307 (b) of the Communications Act of 1934, as amended.

5. Any interested party who is of the opinion that the amendment proposed by petitioner should not be adopted or should not be adopted in the form set forth herein may file with the Commission on or before September 30, 1953, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments or briefs. The Commission will consider all such comments that are submitted before taking action in this matter, and if any comments appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

6. In accordance with the provisions of § 1.764 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

Adopted: August 26, 1953.

Released: August 27, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 53-7669; Filed, Sept. 1, 1953; 8:50 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Office of the Secretary

WYOMING

NOTICE FOR FILING OBJECTIONS TO ORDER[1] RESERVING CERTAIN PUBLIC LANDS IN CONNECTION WITH THE SHERIDAN COUNTY ELK WINTER PASTURE

For a period of 30 days from the date of publication of the above-entitled order, persons having cause to object to the terms thereof may present their objections to the Secretary of the Interior. Such objections should be in writing, should be addressed to the Secretary of the Interior, and should be filed in duplicate in the Department of the Interior, Washington 25, D. C. In case any objection is filed and the nature of the opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the order may state their views and where the proponents of the order can explain its purpose, intent, and extent. Should any objection be filed, whether or not a hearing is held, notice of the determi-

[1] See Title 43, Chapter I, Appendix, P. L. O. 914, *supra.*

nation by the Secretary as to whether the order should be rescinded, modified or let stand will be given to all interested parties of record and the general public.

ORME LEWIS,
Assistant Secretary of the Interior

AUGUST 27, 1953.

[F. R. Doc. 53-7653; Filed, Sept. 1, 1953; 8:46 a. m.]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

CHIEF AND ASSISTANT CHIEFS, TELEPHONE ENGINEERING DIVISION

DELEGATION OF AUTHORITY TO APPROVE CERTAIN CONTRACTS AND AGREEMENTS

Effective August 15, 1953, the following delegations of authority have been authorized:

Authority has been delegated to the Chief and Assistant Chiefs, Telephone Engineering Division (in addition to the Deputy Administrator and Assistant Administrator—Telephone) to approve "for the Administrator" contracts, agreements, assignments, and amendments thereto, and any certificates and final inventory documents in connection with such contracts and agreements between REA telephone borrowers and parties other than the United States which provide for engineering and architectural services, construction, the purchase and installation of materials and equipment and miscellaneous services and rights in connection with the engineering and construction of telephone borrowers facilities.

This delegation supersedes all prior delegations made with reference to this subject matter.

Issued this fourteenth day of August 1953.

[SEAL] ANCHER NELSEN,
Administrator

[F. R. Doc. 53-7685; Filed, Sept. 1, 1953; 8.53 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 6260]

PIONEER AIR LINES, INC., TRANSFER OF EQUIPMENT

NOTICE OF HEARING

In the matter of the application of Pioneer Air Lines, Inc., for approval under section 408 of the Civil Aeronautics Act of 1938, as amended, of the transfer of equipment.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, that hearing in the above-entitled proceeding is assigned to be held on September 3, 1953, at 10:00 a. m., e. d. s. t., in Room 1851, Commerce Building, Fourteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner James S. Keith.

Dated at Washington, D. C., August 28, 1953.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 53-7687; Filed, Sept. 1, 1953; 8:54 a. m.]

[Docket No. 6141]

LINEAS AEREAS COSTARRICENCES, S. A., AMENDMENT OF PERMIT

NOTICE OF HEARING

In the matter of the application of Lineas Aereas Costarricenses, S. A. for amendment of its foreign air carrier permit pursuant to section 402 of the Civil Aeronautics Act of 1938, as amended.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 402 and 1001 of the said act, that a hearing in the above-entitled proceeding be assigned to be held on September 9, 1953, at 10:00 a. m., e. d. s. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Barron Fredricks.

Lienas Aereas Costarricenses, S. A. requests that its permit be amended so as to authorize service to the intermediate point Managua, Nicaragua, to eliminate the intermediate point Puerto Cabezas, Nicaragua, to authorize an operational stop without traffic rights at Havana, Cuba, and to extend the term of the permit permanently or for such period as the Board may deem appropriate. By an amendment to the application, which amendment will be filed with the Board prior to the hearing date herein assigned, the applicant will request authorization of service to the island Grand Cayman, British West Indies, as an additional intermediate point. Without limiting the scope of the issues presented by the application, particular attention will be directed to the questions:

1. Whether the proposed air transportation will be in the public interest.

2. Whether the applicant is fit, willing, and able to perform such transportation.

Notice is further given that any person, other than a party of record, desiring to be heard in this proceeding must file with the Board on or before September 9, 1953, a statement setting forth the matters of fact or law, raised by the application, which he desires to present.

For further details of the service proposed and the amendment requested interested persons are referred to the application and the report of prehearing conference on file with the Civil Aeronautics Board.

Dated at Washington, D. C., August 28, 1953.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 53-7688; Filed, Sept. 1, 1953; 8:54 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 7273, 10659]

DAILY NEWS TELEVISION CO. AND LOU POLLER

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Daily News Television Company, Philadelphia, Pennsylvania, Docket No. 7273, File No. BPCT-119; Lou Poller, Philadelphia, Pennsylvania, Docket No. 10659, File No. BPCT-1397; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 26th day of August 1953;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 23 in Philadelphia, Pennsylvania; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters dated July 14, 1953, that their applications were mutually exclusive, that a hearing would be necessary, that certain questions were raised as a result of deficiencies of a financial and technical nature in their applications; and that further questions were raised as to whether their proposed operations meet the requirements of the Commission's rules; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the replies to the above letters, the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory; that Daily News Television Company is legally, financially and technically qualified to construct, own and operate a television broadcast station; and that Lou Poller is legally qualified to construct, own and operate a television broadcast station and is technically so qualified except as to the matters referred to in issues "2" and "3" below;

It is ordered, That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 10:00 a. m. on September 25, 1953, in Washington, D. C., upon the following issues:

1. To determine whether Lou Poller is financially qualified to construct, own, and operate the proposed television broadcast station.

2. To determine whether the engineering data contained in the above-entitled application of Lou Poller is in accordance with the requirements of § 3.684 of the Commission's rules.

3. To determine the transmitter output and effective radiated power, as affected by diplexer loss, of the operation proposed by Lou Poller in his above-entitled application, with particular reference to the ratio of aural to visual effective radiated power required by § 3.682 (a) (15) of the Commission's rules.

4. To determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest, convenience and necessity in the light of

the record made with respect to the significant differences between the applications as to:

(a) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the above-entitled applications.

Released: August 28, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 53-7671; Filed, Sept. 1, 1953; 8:51 a. m.]

[Docket No. 9341]

TAMPA BROADCASTING CO. (WALT)

ORDER SCHEDULING HEARING

In re application of W Walter Tison tr/as Tampa Broadcasting Co. (WALT) Tampa, Florida, Docket No. 9341, File No. BP-6537; for construction permit to change frequency, power, hrs. of operation, etc.

A conference was held in the above entitled matter at the offices of the Commission on August 14, 1953, at which time the applicant and the Commission's Broadcast Bureau agreed to attempt to reach certain stipulations of fact.

It was further agreed that the applicant would submit its case in writing on the 25th day of September at Washington, D. C. The written testimony which will be adduced will be submitted for the examination of the Commission's Broadcast Bureau prior to such date and the Bureau will advise the applicant of those witnesses which it desires to cross-examine.

Accordingly, it is ordered, This 27th day of August 1953, that the proceeding in the above matter will reconvene at 10:00 a. m., September 25, 1953, at Washington, D. C., for the mentioned purpose.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WM. P MASSING,
Acting Secretary.

[F. R. Doc. 53-7672; Filed, Sept. 1, 1953; 8:51 a. m.]

[Docket Nos. 10642, 10643]

WCAX BROADCASTING CORP. AND COLONIAL TELEVISION, INC.

MEMORANDUM OPINION AND ORDER CONTINUING HEARING

In re applications of WCAX Broadcasting Corporation, Montpelier, Vermont, Docket No. 10642, file No. BPCT-1327; Colonial Television, Inc., Montpelier, Vermont, docket No. 10643, file No. BPCT-1557; for TV construction permits.

The Commission has before it the motion of Colonial Television, Inc., filed August 20, 1953, to continue the hearing in the above-entitled proceeding from September 11 to October 26, 1953. This is opposed by the competing applicant, WCAX Broadcasting Corporation, and by the Commission's Broadcast Bureau.

Vermont is the only state now without a television station and the only applications pending for television facilities therein are those of WCAX and Colonial which are mutually exclusive, both specifying Channel 3 for Montpelier. Thus, the Commission, in its order of July 1, 1953, granted the petition of WCAX, in which Colonial joined, for an early hearing, and, in so doing, advanced the two applications involved to the top of the Group A-2 processing line specified by footnote 10 to § 1.371 of the rules.

Television Channels 3 and 40 are allocated to Montpelier, Vermont (§ 3.606) The WCAX application for Channel 3 was filed September 11, 1952. It was uncontested and without competition for about three months, when Colonial applied for the same channel. Immediately following its expediting action of July 1, 1953, supra, and on July 6, 1953, the Commission, pursuant to section 309 (b) of the Communications Act of 1934, as amended, notified the two applicants that their proposals were mutually exclusive, and that a hearing thereon would be required. The notice outlined the deficiencies found in each proposal and the parties were afforded the opportunity to make corrections. A timely response to this notification was received from WCAX, but there was no reply from Colonial. Thereupon, the Commission, on August 14, 1953, entered an order designating the two applications for hearing in a consolidated proceeding upon appropriate issues which were embodied in the order. All concerned were notified that the hearing would commence on September 11, 1953.

For some time, at least since May 7, 1953, Colonial has been contemplating an amendment to its application to specify a different transmitter site, whereby the area of its proposed station's coverage would be increased. It claims to have instructed its engineering consultant more than three months ago to undertake the necessary surveys and studies with reference to this amendment, in order that delays would not be encountered in the event the Commission should specify an early hearing date. Colonial now claims to have been informed by its engineering consultant that because of his illness and the death of a member of his family, he has been delayed in the necessary work, and that his studies cannot be completed "before the middle part of October 1953." This is the primary support for Colonial's motion for continuance, but it also points out that September 11, 1953, the present hearing date, "happens to fall on the extremely important Jewish holiday Rosh Hashana, and the legal counsel of Colonial Television, Inc. and the stockholders of this corporation, being all of Jewish faith, would be unable to attend."

It is apparent that good cause, within the meaning of § 1.811 of the Commission's rules, has not been shown by Colonial to support its request to continue the hearing for the length of time specified in its motion, for, by the exercise of reasonable diligence, it could have amended its application in the desired respects and filed same long since, it could have responded to the Commission's notice of July 6, 1953, supra, and its application could now be in proper form for hearing. The Commission is not at this time disposed to authorize delay in the proceeding to enable Colonial to accomplish that which it could have accomplished some months ago. Substitute engineering counsel could and should have been retained by Colonial when illness and other causes delayed its regular consultant in completing his work within a reasonable time. While it is appropriate to postpone the hearing for a few days because of the religious holiday mentioned by Colonial, September 11, 1953, any further postponement would not be warranted.

Accordingly, it is ordered, This 25th day of August 1953, that the motion of Colonial Television, Inc., for continuance of the hearing in the above-entitled proceeding from September 11, 1953, to October 26, 1953, is denied; and, *It is further ordered,* On the Commission's own motion, that said hearing is continued to September 15, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WM. P MASSING,
Acting Secretary.

[F. R. Doc. 53-7673; Filed, Sept. 1, 1953; 8:51 a. m.]

[Docket Nos. 10660, 10661]

BOOTH RADIO & TELEVISION STATIONS, INC., AND WOODWARD BROADCASTING CO.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Booth Radio & Television Stations, Inc., Detroit, Michigan, Docket No. 10660, File No. BPCT-724, Woodward Broadcasting Company, Detroit, Michigan, Docket No. 10661, File No. BPCT-1418; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 26th day of August 1953;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 50 in Detroit, Michigan; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications

Act of 1934, as amended, the above-named applicants were advised by letters dated July 16, 1953, that their applications were mutually exclusive, that a hearing would be necessary, that the question as to whether their proposed antenna systems and sites would constitute hazards to air navigation were unresolved, and that certain questions were raised as a result of deficiencies of a financial and technical nature in their applications; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the replies to the above letters (no reply having been received from Woodward Broadcasting Company) the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory; that Booth Radio & Television Stations, Inc., is legally and financially qualified to construct, own and operate a television broadcast station, and is technically so qualified except as to the matter referred to in issue "1" below; and that Woodward Broadcasting Company is legally qualified to construct, own and operate a television broadcast station, and is technically so qualified except as to the matters referred to in issues "3" and "4" below;

It is ordered, That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 10:00 a. m. on September 25, 1953, in Washington, D. C., upon the following issues:

To determine whether the installation of the station proposed by Booth Radio & Television Stations, Inc., in its above-entitled application would constitute a hazard to air navigation.

2. To determine whether Woodward Broadcasting Company is financially qualified to construct, own and operate its proposed television broadcast station.

3. To determine whether the engineering data contained in the application of Woodward Broadcasting Company is in accordance with the requirements of § 3.684 of the Commission's rules.

4. To determine the transmitter output and effective radiated power, as affected by diplexer loss, of the operation proposed by Woodward Broadcasting Company in its above-entitled application, with particular reference to the ratio of aural to visual effective radiated power required by § 3.682 (a) (15) of the Commission's rules.

5. To determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest, convenience and necessity in the light of the record made with respect to the significant differences between the applications as to:

(a) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the above-entitled applications.

Released: August 28, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 53-7674; Filed, Sept. 1, 1953; 8:51 a. m.]

[Docket Nos. 10665, 10666]

CHESAPEAKE TELEVISION BROADCASTING, INC., AND THE BALTIMORE RADIO SHOW, INC.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Chesapeake Television Broadcasting, Inc., Baltimore, Maryland, Docket No. 10665, File No. BPCT-1429; The Baltimore Radio Show, Incorporated, Baltimore, Maryland, Docket No. 10666, File No. BPCT-1477; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 26th day of August 1953;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 18 in Baltimore, Maryland; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters dated July 22, 1953, that their applications were mutually exclusive, that a hearing would be necessary and that the question of whether their proposed antenna systems and sites would constitute a hazard to air navigation was unresolved; that Chesapeake Television Broadcasting, Inc., was advised by the said letter that certain questions were raised as a result of deficiencies of a financial and technical nature in its application, and as to whether its proposed operation meets the requirements of the Commission's rules; and that The Baltimore Radio Show, Incorporated was advised by the said letter that certain questions were raised as a result of deficiencies of a legal, financial and technical nature in its application; and

It further appearing, that upon due consideration of the above-entitled applications (no replies having been received to the above letters), the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory; that Chesapeake Television Broadcasting, Inc., is legally and technically qualified to construct, own and operate a television broadcast station except as to the matters referred to in the issues below; and that The Baltimore Radio Show, Incorporated, is technically qualified to construct, own and operate a television broadcast station except as to the matters referred to in the issues below;

It is ordered, That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 10:00 a. m. on September 25, 1953, in Washington, D. C., upon the following issues:

1. To determine whether the above-named applicants are financially qualified to construct, own and operate the proposed television broadcast station.

2. To determine the transmitter output and effective radiated power, as affected by the multiplexer loss, of the operations proposed by the above-named applicants, with particular reference to the ratio of aural to visual effective radiated power required by § 3.682 (a) (15) of the Commission's rules.

3. To determine whether the main studio site proposed by Chesapeake Television Broadcasting, Inc., in its above-entitled application is in accordance with the requirements of § 3.613 of the Commission's rules.

4. To determine whether The Baltimore Radio Show, Incorporated, is authorized to construct, own and operate the proposed television broadcast station.

5. To determine whether The Baltimore Radio Show, Incorporated, in its above entitled application, has complied with § 1.305 of the Commission's rules.

6. To determine the rated power (aural) of the transmitter proposed by The Baltimore Radio Show, Incorporated, in its above-entitled application.

7. To determine whether the installation of the station proposed by The Baltimore Radio Show, Incorporated in its above-entitled application would constitute a hazard to air navigation.

8. To determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest convenience and necessity in the light of the record made with respect to the significant differences between the applications as to:

(a) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the above-entitled applications.

Released: August 28, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WM. P. MASSING,
Acting Secretary.

[F. R. Doc. 53-7675; Filed, Sept. 1, 1953; 8:51 a. m.]

[Docket No. 10669]

ARROW ELECTRIC CO.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re applications of Arrow Electric Company, West Palm Beach, Florida, Docket No. 10669, File No. 866-C2-P-53; for construction permits in the Domestic Public Land Mobile Radio Service.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 26th day of August 1953;

The Commission, having under consideration the above-entitled applications; a letter from Walter W Sargent, d/b as Radio Dispatch Service, dated April 13, 1953, protesting grant of the applications without hearing; the Commission's notification, dated April 21, 1953, issued pursuant to the provisions of section 309 (b) of the Communications Act of 1934, as amended; and the applicant's reply thereto; and

It appearing, that Walter W Sargent, d/b as Radio Dispatch Service has been licensed by the Commission in the Domestic Public Land Mobile Radio Service to provide a service in the West Palm Beach, Florida area since August 1, 1950 similar to that proposed by the above-entitled applicant; and

It further appearing, that the public demand for service in the area proposed to be served may not warrant the establishment of a competitive service;

It is ordered, That, pursuant to the provisions of section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing at the offices of the Commission in Washington, D. C., commencing at 10:00 a. m. on October 1, 1953, upon the following issues:

1. To determine the area and population which may be expected to receive service from the proposed station and the need for such service in the area proposed to be served.

2. To determine, in the light of the evidence adduced on Issue No. 1, whether any public benefit will be derived from the establishment of competition in this service in the area proposed to be served.

3. To determine the facts with respect to the proposed facilities, personnel, rates, regulations, practices and services of the applicant.

4. To determine, in the light of the evidence adduced on the foregoing issues whether public interest, convenience or necessity would be served by a grant of the applications.

It is further ordered, That Walter W Sargent, d/b as Radio Dispatch Service is made party respondent to this proceeding.

Released: August 28, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WM. P MASSING,
Acting Secretary.

[F R. Doc. 53-7676; Filed, Sept. 1, 1953; 8:51 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-1012, G-1319, G-1568, G-1554, G-1558, G-1559, G-1560, G-1576, G-1584, G-1655, G-2077, G-2108]

ALGONQUIN GAS TRANSMISSION CO. ET AL.

ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

AUGUST 27, 1953.

In the matters of Algonquin Gas Transmission Company, Docket No. G-1319; Northeastern Gas Transmission Company, Docket No. G-1568; Texas Eastern Transmission Corporation, Docket No. G-1012; Portland Gas Light Company, Docket No. G-1554; Biddeford and Saco Gas Company, Docket No. G-1558; Gas Service, Incorporated, Docket No. G-1559; Allied New Hampshire Gas Company, Docket No. G-1560; Greenfield Gas Light Company, Docket No. G-1576; Gardner Gas Fuel and Light Company, Docket No. G-1584; Athol Gas Company, Docket No. G-1655; Blackstone Valley Gas and Electric Company, Docket No. G-2077; Tennessee Gas Transmission Company, Docket No. G-2108.

Notice is hereby given that on August 20, 1953, the Federal Power Commission issued its order adopted August 19, 1953, amending order of August 6, 1953 (18 F R. 4896) issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 53-7663; Filed, Sept. 1, 1953; 8:48 a. m.]

[Docket No. G-2181]

PHILADELPHIA ELECTRIC CO.

ORDER FIXING DATE OF HEARING

On June 1, 1953, Philadelphia Electric Company (Applicant) a Pennsylvania corporation having its principal place of business at Philadelphia, Pennsylvania, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of certain natural-gas transmission facilities, subject to the jurisdiction of the Commission, as described in the application on file with the Commission and open to public inspection.

The Commission finds:

(1) This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for non-contested proceedings, and no request to be heard, protest or petition having been filed subsequent to the giving of due notice of the filing of the application including publication in the FEDERAL REGISTER on June 16, 1953 (18 F. R. 3449)

(2) It is reasonable and in the public interest and good cause exists for fixing the date of hearing in this proceeding less than 15 days after publication of this order in the FEDERAL REGISTER.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing be held on September 11, 1953, at 9:45 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by such application: *Provided, however,* That the Commission may after a non-contested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) [18 CFR 1.8 and 1.37 (f)] of the said rules of practice and procedure.

Adopted: August 26, 1953.

Issued: August 27, 1953.

By the Commission.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 53-7655; Filed, Sept. 1, 1953; 8:46 a. m.]

[Docket No. G-2184]

EL PASO NATURAL GAS CO.

ORDER FIXING DATE OF HEARING

On June 4, 1953, El Paso Natural Gas Company (Applicant), a Delaware corporation with its principal place of business in El Paso, Texas, filed an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of facilities, subject to the jurisdiction of the Commission, as described in the application on file with the Commission, and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings, and no request to be heard, protest, or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on June 26, 1953 (18 F R. 3678)

The Commission orders:

(1) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on September 17, 1953, at 9:45 a. m., e. d. s. t. in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington D. C., concerning the matters involved in and the issues presented by the application: *Provided, however,* That the Commission may, after a noncontested hearing, forthwith

dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(2) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 26, 1953.

Issued: August 27, 1953.

By the Commission.

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F. R. Doc. 53-7656; Filed, Sept. 1, 1953; 8:47 a. m.]

[Docket No. G-2214]

CITIES SERVICE GAS CO.

ORDER FIXING DATE OF HEARING

On July 16, 1953, Cities Service Gas Company (Applicant) a Delaware Corporation having its principal place of business in Oklahoma City, Oklahoma, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the construction and operation of certain natural-gas transmission facilities subject to the jurisdiction of the Commission as described in the application on file with the Commission and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings, and no request to be heard, protest or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on August 5, 1953 (18 F. R. 4612)

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on September 17, 1953, at 9:30 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by the application herein: *Provided, however* That the Commission may, after a noncontested hearing dispose of the proceeding pursuant to provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State Commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 26, 1953.

Issued: August 27, 1953.

By the Commission.

[SEAL] J. H. GUTRIDE, *Acting Secretary.*

[F. R. Doc. 53-7657; Filed, Sept. 1, 1953; 8:47 a. m.]

FEDERAL TRADE COMMISSION

[File No. 21-437]

WATCH ATTACHMENT INDUSTRY

NOTICE OF HEARING AND OF OPPORTUNITY TO PRESENT VIEWS, SUGGESTIONS, OR OBJECTIONS

Opportunity is hereby extended by the Federal Trade Commission to any and all persons, partnerships, corporations, associations, or other parties, including farm, labor, and consumer groups, affected by or having an interest in the proposed trade practice rules for the Watch Attachment Industry, to present to the Commission such pertinent information, suggestions, or objections regarding the rules as they may desire to submit, and to be heard in the premises. For this purpose copies of the proposed rules may be obtained upon request to the Commission. Such views, information, suggestions, or objections may be submitted by letter, memorandum, brief, or other communication, to be filed with the Commission not later than September 24, 1953. Opportunity to be heard orally also will be afforded at the hearing beginning at 10 a. m., e. d. s. t., September 24, 1953, in the Jensen Salon of the Waldorf-Astoria Hotel, New York City, to any person who desires to appear and be heard. After due consideration of all matters presented in writing or orally, the Commission will proceed to final action on the proposed rules.

The industry for which these rules are proposed is comprised of persons, firms, corporations and organizations engaged in the manufacture, sale, offering for sale, or distribution of metal watch bracelets, bands, or other attachments designed for use in conjunction with a watchcase. The primary industry product, in terms of dollar value and volume, is the metal expansion-type watch bracelet.

Issued: August 28, 1953.

By direction of the Commission.

[SEAL] ALEX. AKERMAN, Jr., *Secretary.*

[F. R. Doc. 53-7677; Filed, Sept. 1, 1953; 8:51 a. m.]

OFFICE OF DEFENSE MOBILIZATION

[ODM (DPA) Request No. 29—DPAV-47]

REQUEST TO PARTICIPATE IN THE ACTIVITIES OF SIGNAL CORPS INTEGRATION COMMITTEE ON HYDROGEN THYRATRON TUBES

Pursuant to section 708 of the Defense Production Act of 1950, as amended, the requests set forth below to participate in the activities of a Signal Corps Integration Committee on Hydrogen Thyratron Tubes in accordance with the Voluntary Plan entitled "Plan and Regulations of Signal Corps Governing the Integration Committee on Hydrogen Thyratron Tubes," dated October 19, 1951, as amended, were approved by the Attorney General after consultations with respect thereto between the Attorney General, the Chairman of the Federal Trade Commission, and the Director of Defense Mobilization and were accepted by the companies listed below.

This Voluntary Plan, as amended, has been approved by the Director of Defense Mobilization and found to be in the public interest as contributing to the national defense.

Contents of Request to Present Participants. Reference is made to the letter of the Defense Production Administrator dated November 16, 1951, requesting your participation in the formation and activities of the Hydrogen Thyratron Tubes Committee. Reference is also made to the Administrator's letter dated April 10, 1952, which modified the first request. An amendment to the Plan and Regulations of Signal Corps Governing the Integration Committee on Hydrogen Thyratron Tubes, dated October 19, 1951, under which this Committee was operating, made necessary such modification.

This Plan does not provide for the establishment of subcommittees. The Assistant Judge Advocate General, Department of the Army, informs me that such a provision is desirable to obtain the maximum benefits possible from the Committee's operations and, accordingly the Chief Signal Officer has requested that a further amendment be made by adding thereto the following new section:

9. *Subcommittees.* Subcommittees may be formed as deemed necessary by the chairman of the committee. Such subcommittees shall be subject to the same requirements, limitations, and procedures as the committee.

You are requested to participate in the activities of the Hydrogen Thyratron Tubes Integration Committee in accordance with the Voluntary Plan entitled "Plan and Regulations of Signal Corps Governing the Integration Committee on Hydrogen Thyratron Tubes" dated October 19, 1951, as further amended. A copy of this revised Plan may be obtained from the Chairman of the Committee.

The Attorney General has approved this request as further modified after consultations with respect thereto between his representatives, representatives of the Chairman of the Federal Trade Commission, and my representatives, pursuant to section 708 of the Defense Production Act of 1950, as amended.

I approve the Voluntary Plan as further amended, and find it to be in the public interest as contributing to the national defense. You will become a participant therein upon notifying me in writing of your acceptance of this further modified request. Will you kindly send two copies thereof to the Procurement Division, Production Branch, Office of the Assistant Chief of Staff, G-4, United States Army, Pentagon Building, Washington 25, D. C.

Immunity from prosecution under the Federal antitrust laws and the Federal Trade Commission Act will be given upon such acceptance provided that the activities of the Hydrogen Thyratron Tubes Integration Committee and your participation therein are within the limits set forth in the Voluntary Plan, as further amended.

Your cooperation in this matter will be appreciated.

Sincerely yours,

ARTHUR S. FLEMMING, *Director.*

Contents of Request to New Companies. You are requested to participate in the activities of the Hydrogen Thyratron Tubes Integration Committee in accordance with a voluntary plan entitled "Plan and Regulations of the Signal Corps Governing the Integration Committee on Hydrogen Thyratron Tubes," dated October 19, 1951, as amended.

A copy of this Plan may be obtained from the Chairman of the Committee.

In my opinion your participation in the activities of this Committee will assist in the accomplishment of our national defense program.

The Attorney General has approved this request after consultation with respect thereto between his representatives, representatives of the Chairman of the Federal Trade Commission, and my representatives, pursuant to section 708 of the Defense Production Act of 1950, as amended.

I approve the Voluntary Plan as amended and find it to be in the public interest as contributing to the national defense. You will become a participant therein upon notifying me in writing of your acceptance of this request. Will you kindly send two copies thereof to the Procurement Division, Production Branch, Office of the Assistant Chief of Staff, G-4, United States Army, Pentagon Building, Washington 25, D. C.

Immunity from prosecution under the Federal antitrust laws and the Federal Trade Commission Act will be given upon such acceptance provided that the activities of the Hydrogen-Thyratron Tubes Integration Committee and your participation therein are within the limits set forth in the Voluntary Plan, as amended.

Your cooperation in this matter will be appreciated.

Sincerely yours,

ARTHUR S. FLEMMING,
Director.

List of companies accepting request to participate:

Edgerton, Germeshausen & Grier, Inc., 160 Brookline Avenue, Boston 15, Mass.

Chatham Electronics Corp., 475 Washington Street, Newark, N. J.

Amperex Electronic Corp., 25 Washington Street, Brooklyn 1, N. Y.

Westinghouse Electric Manufacturing Co., Bloomfield, N. J.

Machlett Laboratories, Springdale, Conn.

Radio Corporation of America, Lancaster, Pa.

Bomac Laboratories, Inc., Salem Road, Beverly, Mass.

American Television Manufacturing Corp., 525 South Plymouth Court, Chicago 5, Ill.

Sylvania Electric Products, Inc., Seneca Falls, N. Y.

General Electric Corp., One River Road, Schenectady 5, N. Y.

Penta Laboratories, Inc., 216 North Milpas Street, Santa Barbara, Calif.

(Sec. 708, 67 Stat. 129, Pub. Law. 95, 83rd Cong., E. O. 10480, August 14, 1953, 18 F. R. 4939)

Dated: August 31, 1953.

ARTHUR S. FLEMMING,
Director

[F. R. Doc. 53-7703; Filed, Aug. 31, 1953; 1:10 p. m.]

[ODM (DPA) Request No. 52—DPAV-48]

REQUEST TO PARTICIPATE IN THE FORMATION AND ACTIVITIES OF ORDNANCE CORPS INTEGRATION COMMITTEE ON PROPELLANTS AND EXPLOSIVES

Pursuant to section 708 of the Defense Production Act of 1950, as amended, the request set forth below to participate in the formation and activities of an Army Ordnance Corps Integration Committee on Propellants and Explosives in accordance with the Voluntary Plan entitled "Plan and Regulations of Ordnance Corps Covering the Integration Committee on Propellants and Explosives" dated May 15, 1953, was approved by the Attorney General after consultations with respect thereto between the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Office of Defense Mobilization, and was accepted by the companies listed below.

This Voluntary Plan provides for the formation and operations of the Propellants and Explosives Integration Committee and will make available to all the participating companies the production experience and techniques of each. It will also, among other things, integrate the facilities of the participants which will result in the quick attainment of maximum production and the maintenance thereof. The Voluntary Plan has been approved by the Director of the Office of Defense Mobilization and found to be in the public interest as contributing to the national defense.

Contents of Request to Participants. You are requested to participate in the formation and activities of the Integration Committee on Propellants and Explosives in accordance with a voluntary plan entitled "Plan and Regulations of Ordnance Corps Covering the Integration Committee on Propellants and Explosives," dated May 15, 1953, a copy of which is herewith enclosed.

In my opinion, your participation in the formation and activities of this Committee will assist in the accomplishment of our national defense program.

The Attorney General has approved this request after consultations with respect thereto between his representatives, representatives of the Chairman of the Federal Trade Commission, and my representatives, pursuant to section 708 of the Defense Production Act of 1950, as amended.

I approve the Voluntary Plan and find it to be in the public interest as contributing to the national defense. You will become a participant therein upon notifying me in writing of your acceptance of this request. Will you kindly send two copies thereof to the Procurement Division, Production Branch, Office of the Assistant Chief of Staff, G-4, United States Army, Pentagon Building, Washington 25, D. C.

Immunity from prosecution under the Federal antitrust laws and the Federal Trade Commission Act will be given upon such acceptance, provided that the activities of the Integration Committee on Propellants and Explosives and your participation therein are within the limits set forth in the Voluntary Plan.

Your cooperation in this matter will be appreciated.

Sincerely yours,

ARTHUR S. FLEMMING,
Director.

List of companies accepting request to participate:

Liberty Powder Defense Corp., c/o Badger Ordnance Works, Baraboo, Wis.

E. I. du Pont de Nemours & Co., c/o Indiana Ordnance Works, Charlestown, Ind.

Goodyear Engineering Corp., c/o Indiana Arsenal, Charlestown, Ind.

Hercules Powder Co., c/o Radford Arsenal, Radford, Va.

Hercules Powder Co., c/o Sunflower Ordnance Works, Lawrence, Kans.

U. S. Rubber Co., c/o Kankakee Unit, Joliet Arsenal, Joliet, Ill.

Holston Defense Corp., c/o Holston Ordnance Works, Kingsport, Tenn.

Atlas Powder Co., c/o Volunteer Ordnance Works, Chattanooga, Tenn.

Liberty Powder Co., Wabash River Division, Newport, Ind.

(Sec. 708, 67 Stat. 129, Pub. Law 95, 83rd Congress, Executive Order 10480, August 14, 1953, 18 F. R. 4939)

Dated: August 31, 1953.

ARTHUR S. FLEMMING,
Director.

[F. R. Doc. 53-7704; Filed, Aug. 31, 1953; 1:10 p. m.]